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FEDERAL COMMUNICATIONS COMMISSION

Dennis R. Patrick, Chairman

James H. Quello

Patricia Diaz Dennis

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Federal Communications Commission Record

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Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-191

In the Matter of

Amendment of Part 94 of the rules regarding point-to-multipoint use of the 2.5, 10.6, and 18 GHz bands by Private Operational Fixed Microwave licensees

Amendment of Part 1 of the rules concerning the general procedures for filing an application in the Private Operational Fixed Microwave Service

NOTICE OF PROPOSED RULE MAKING

Adopted: April 21, 1988; Released: June 8, 1988

By the Commission:

1. The Commission, on its own motion, institutes this proceeding to reexamine some of its technical and procedural rules primarily governing point-to-multipoint operations by private radio licensees in the 2.5, 10.6 and 18 GHz bands.

2. Point-to-multipoint microwave operations for private entities are regulated under Part 94 of our Rules.[1] The specific bands that are available for such use are at 900 MHz, 2.5 GHz, 10.6 GHz, and 18 GHz. Private point-to-multipoint systems[2] currently are used by a variety of different entities who need to communicate or transmit information from a central fixed location to a number of outlying fixed locations. For example, airlines operate low-power video systems at airports on these channels for security monitoring and flight schedule displays. Local governments use these channels for police and fire training, video conferencing, and transfer of information. In addition, a number of entities have been licensed on these channels for the purpose of distributing video programming and information to serve subscribers (*i. e.*, a private point-to-multipoint distribution service).

3. In this *Notice of Proposed Rule Making* (*Notice*) we undertake a reexamination of our technical regulations governing point-to-multipoint operations in the 2.5 GHz, 10.6 GHz, and 18 GHz bands. We also explore additional uses for the response channels in the 2.5 GHz band and reexamine the system network structure, permissible communications, and reporting requirements applicable to the 10.6 GHz and 18 GHz bands.[3] Finally, we review our filing requirements for determining mutual exclusivity among Part 94 applications.

4. We are reviewing our regulations for these three bands for several reasons. First, we believe that the detailed engineering analysis now required to establish interference protection among OFS stations can be eliminated if we establish a standard mileage separation for point-to-multipoint operations. This would simplify the process, reduce uncertainty for licensees and improve administrative efficiency. Further, to promote additional use of the 10.6 and 18 GHz bands by private entities, we are making several proposals to remove possible impediments. In addition to specifically addressing point-to-multipoint operations we wish to further simplify the process of handling mutually exclusive applications in all Part 94 operations by modifying the timeframe that determines when such a situation exists.

PROPOSALS

I. Technical Issues

5. Interest in point-to-multipoint operations has increased dramatically over the last several years. The most intensive use has been in the 928-960 MHz band where equipment is readily available at relatively low cost. However, as technology progresses and equipment costs decline, we expect that applicants will look to the higher bands to satisfy point-to-multipoint requirements.

6. Our experience to date in licensing point-to-multipoint operations in the three higher bands, although limited, has uncovered several areas that merit examination. We have, for example, discovered a real need to establish and/or adjust our separation criteria to determine mutual exclusivity among applications. In 1983 we received approximately 2,100 private radio applications for frequencies in the 2.5 GHz band. After initial analysis of these applications, we found that there were no existing criteria for determining mutual exclusivity among them. The Commission, therefore, had to develop an ad hoc standard that would allow it to review and process these applications. It did so, but only after substantial delay which could have been avoided.[4]

7. We anticipate that similar problems will arise in the future if we do not adopt protection criteria. We suspended all filing of 2.5 GHz private radio applications in December, 1983 due to the large number of applications received during the original filing period.[5] If the initial filing is any indication of the interest in obtaining a license for these frequencies, we can again expect a large number of applications to be filed once the freeze is lifted. Additional users in the band inevitably will lead to greater frequency congestion and closer spacing of stations. This increase in density, in turn, could bring a corresponding increase in the use of the Commission's processes to remedy instances of alleged harmful interference. Therefore, we believe we should establish in the rules for this band co-channel and adjacent channel interference criteria to minimize the need for Commission involvement in resolving interference disputes and to enable us to resolve those disputes efficiently.

8. We also see a need to reexamine our protection criteria in the 10.6 and 18 GHz bands. These frequencies currently are governed by Subpart F of Part 94 of the rules and are limited to DTS use.[6] The present rules require each application for a new or modified DTS nodal station to include an analysis of the potential harmful interference to all other licensed and previously-

applied-for co-channel and adjacent channel stations located within 50 miles of the proposed station.[7] Since we had no previous experience with DTS operations at the time of the allocation, we stated that the interference protection criteria set out in 94.63(d)(3) would apply here.[8] These criteria, however, appear to be overly conservative, thus restricting new entry.

9. In establishing the interference criteria in these three bands we seek to reduce the licensing burden both on the public and the Commission and, at the same time, establish a reliable communications service without sacrificing the efficient use of the spectrum.

A. *Co - channel Interference*

10. In developing a co-channel mileage standard, there is the need to balance the desire to provide an acceptable level of protection to existing stations with the desire to maximize the number of new stations that can use the frequencies. In point-to-multipoint operations, the sites that are most likely to experience harmful co-channel interference are those remotes located on an imaginary straight line that connects the desired station and the undesired station and located either on the side of the desired transmitter that is away from the undesired transmitter or on the side of the desired transmitter closest to the undesired transmitter. In the first case, the receiving antennas will be pointed directly at both the desired transmitter and the undesired transmitter. In the latter case, the remote site is located closest to the undesired transmitter.

11. For operations at 2.5 GHz, it is generally accepted that, under normal propagation conditions, the transmitted signal is attenuated dramatically at distances beyond the radio horizon.[9] The protection criterion we propose in this band are based on this phenomenon. We are proposing to protect receive sites within a 20-mile radius of the associated co-channel nodal station. To determine the separation necessary to meet this objective, we have assumed a maximum proposed station antenna height above average terrain (AAT) of 300 feet, a receiver antenna height of 30 feet, and 4/3 earth radius propagation conditions. With these assumptions, the needed separation works out to be approximately 50 miles. Therefore, we propose a co-channel separation for the 2.5 GHz private radio channels of 50 miles. We propose to use this standard where the proposed station's antenna height is 300 feet or less. In cases where the applicant proposes to construct a station with an antenna height greater than that assumed in our model, thus extending its radio horizon, we propose that the applicant submit an interference analysis. The analysis must show the effect of the proposed station on the co-channel operations of all existing stations and pending applications before the Commission that are located within 20 miles of the proposed station's line-of-sight propagation path.[10]

12. One option we considered for establishing an OFS licensee's co-channel interference rights was to take a case-by-case approach used for the 2.5 GHz MDS (common carrier) operations regulated under Part 21. The criteria adopted in Part 21 seek to protect a specific service area and define what constitutes harmful co-channel interference.[11] Under this approach, applicants must submit an engineering analysis showing that a proposed station will meet the specified protection criteria. Using this approach for private operations, however, may not be appropriate.

13. The structure and regulation of the common carrier industry is quite different from that for the private radio services. For example, as part of their regulation, common carriers are authorized protected coverage areas so that they can provide an established grade of service to the ratepayer public. Private radio operations, on the other hand, are regulated more from a technical standpoint than on a service-oriented basis. Private radio licensees design their systems to meet their own requirements, in which the grade of service may vary considerably. Because of this, a standard service contour may not be appropriate, nor would one be easily determined. Furthermore, the use of a standard mileage separation, we have found, considerably reduces the burden on an applicant to develop a detailed technical showing of non-interference as well as on the Commission to analyze such showings. This separation criteria approach is consistent with that used for point-to-multipoint operations in the 928/960 MHz multiple address service (MAS) band and we believe that it should be taken for operations in these higher bands as well.

14. While the configuration for point-to-multipoint operations at 10.6 and 18 GHz is the same as 2.5 GHz, propagation at the higher bands is different than it is at 2.5 GHz. At 10.6 and 18 GHz the signal is attenuated much more rapidly. This greater attenuation reduces the coverage of both the desired and undesired stations. In these bands, stations should be able to be located closer than 50 miles and still provide a high quality signal. For the purposes of this Notice we propose a 35-mile co-channel mileage separation standard,[12] the same standard we adopted for determining exclusivity in the 18 GHz lottery.[13] We specifically request comments on the appropriateness of this separation standard for determining co-channel interference.[14] Comments should address the carrier-to-interference (C/I) and threshold-to-interference (T/I) ratios necessary to provide a high quality signal for point-to-multipoint operations at these higher bands.[15]

15. Consistent with our general policy,[16] we will allow deviations from our co-channel assignment standards when all affected co- channel licensees and pending applicants agree in writing to the short- spaced assignment. More specifically, consent is needed from all licensees and applicants whose co-channel nodal stations are located within 20 miles for 2.5 GHz band operations, or 12 miles for 10.6 and 18 GHz band operations, of the line-of-sight propagation path of the proposed station. Also, we realize that the assignment standards being proposed here may not be appropriate in every case. For example, the terrain between two systems may be such that stations can be located closer together and still provide sufficient protection. Therefore, we will consider lesser spacings if the applicant can demonstate that the radio horizon of the proposed station does not intrude upon the coverage area of an existing or pending 2.5 GHz operation (20 mile radius of nodal station at 2.5 GHz and 12 mile radius at 10.6 and 18 GHz) or if the applicant can demonstrate that the chance of interference to co-channel users (existing and pending) within 50 miles or 35 miles, depending on the band, is minimal. For purposes of determining interference potential in this latter case, applicants must provide all existing and pending co-channel operations (within a 20-mile or 12-mile radius of the nodal station depending on the band) a co-channel C/I protection ratio

of at least 45 dB.[17] We specifically request comments on the appropriateness of this ratio as it applies to point-to-multipoint operations at 10.6 and 18 GHz.

B. *Adjacent Channel Interference*

16. The three 2.5 GHz private radio channels are immediately adjacent to channels used by Instructional Television Fixed Service (ITFS) licensees for the transmission of television signals.[18] Therefore, there is the possibility of interference to and from adjacent channel video transmission stations operating in the same area. Adjacent channel interference in broadcast television is controlled through specified transmitter separations. However, adjacent channel interference considerations at 2.5 GHz are somewhat different than for TV. Because of these differences, as explained below, we do not propose a separation requirement for adjacent channel OFS and ITFS operations.

17. A typical ITFS system configuration consists of a central microwave transmitter and, at the receive site, an antenna, a downconverter and a television receiver. The transmitted signal is picked up by the receive antenna and is changed from the over-the-air microwave frequency (2.5 GHz) to a lower frequency compatible with the customer's equipment, usually the frequency of a locally vacant VHF television channel. This means that unlike broadcast television operations, the degree of adjacent channel interference at 2.5 GHz is significantly influenced by downconverter and receive antenna design.

18. In Docket 19493 we concluded that two adjacent channel MDS stations should be able to coexist within the same city without a guard band, provided the facilities were carefully engineered.[19] We reached a similar conclusion in Docket 80-113 where we stated that it is possible to achieve successful adjacent channel operation using 2.5 GHz MDS channels if the transmitting antennas are cross-polarized, colocated, and have the same equivalent isotropically radiated powers (EIRPs). In cases where the transmitters are not co-located, we concluded that there will always exist an area surrounding the undesired transmitter where it will be virtually impossible to receive an interference-free picture. The extent of this problem, again, can be reduced by careful engineering.

19. We believe sufficient attenuation can be obtained using cross-polarization techniques, frequency selective filtering, or both, to reduce adjacent channel problems to acceptable levels. Further, in cases where the receiving antenna is not pointed at both desired and undesired transmitting antennas, the receive antenna's angular discrimination characteristics can be used to control the level of unwanted signals received. It appears, therefore, that the benefits of increased 2.5 GHz private radio channel usage outweigh the small risk of interference caused by the absence of specific adjacent channel interference standards. Consequently, we do not propose an adjacent channel separation requirement in the 2.5 GHz band.

20. For operations at 10.6 and 18 GHz the current rules require each application for a new or modified DTS nodal station to include an analysis of the potential harmful interference to all other licensed and previously-applied-for adjacent channel and co-channel stations within 50 miles.[20] As previously discussed one of our primary objectives in this proceeding is to reduce the licensing burden on both the applicant and the Commission whenever possible. We believe this can best be accomplished in point-to-multipoint operations by eliminating the adjacent channel interference analysis requirement. Consistent with this objective, we are proposing to eliminate the requirement that applicants provide an adjacent channel interference analysis. We also propose to delete the notification requirement as it applies to adjacent channel operations.[21]

21. As for determining the appropriateness of a mileage separation standard in this case, we have examined the issue of adjacent channel interference for private point-to-multipoint operations at 10.6 and 18 GHz and believe that no adjacent channel separation requirement is necessary. User stations employ highly directional antennas. Consequently, for a DTS user station to interfere with or receive interference from another system licensed on an adjacent frequency pair, the user station's antenna must generally be pointed directly at the undesired station. Moreover, DTS stations often do not operate over the entire band, thereby further reducing the possibility of adjacent channel interference. The likelihood of adjacent channel interference actually occurring appears to be relatively small. Consequently, the benefits would appear to outweigh the small risk of interference.

22. As we stated previously, however, our experience in licensing DTS operations is limited. Therefore, while we are not proposing an adjacent channel separation standard we ask for comments on whether we should retain some notification requirement. We might, for example, require applicants to certify that they have notified all existing adjacent channel licensees and entities with pending applications where the operation is within the line-of-sight propagation path of the proposed station.[22]

C. *Frequency Tolerance*

23. Under the current 2.5 GHz OFS rules, if a video signal is being transmitted the visual carrier has to be maintained within 60 kHz of the assigned frequency.[23] Such a frequency tolerance does not reflect the current state-of-the-art[24] nor is it efficient in terms of spectrum management.[25] In the *Further Notice of Proposed Rule Making and Notice of Inquiry* in Docket 80-113 we recognized this fact and proposed to require all new MDS licensees operating in the 2.5 GHz band to install transmitters that are capable of maintaining the visual carrier within +1 kHz of the assigned frequency.[26] We believe the same tolerance is appropriate for OFS 2.5 GHz television operations. Tightening the frequency tolerance should further reduce the chance of adjacent channel interference. Further, it could allow for the use of frequency offset techniques to enable short-spaced assignments. Therefore, we propose to require the visual carrier in all new 2.5 GHz private radio channel television operations to be maintained within +1 kHz.

24. In addition to comments on this proposal, we specifically ask for comment on whether the proposed rule should be extended to include currently licensed stations. We are especially interested in the cost and complexity of modifying existing equipment to bring it into compliance with the proposed rule. We also request comments from manufacturers with regard to equipment inventories that do not meet the proposed specification. In the event that commenters advocate applying this standard to existing licensees, comment is solicited as to the time to allow for compliance.

D. *Emissions*

25. Section 94.95(a) of our Rules requires that emissions in the 2.5 GHz band appearing on frequencies more than 3 MHz above or below the upper and lower edges of the assigned channel shall be attenuated no less than: (1) 30 dB for transmitters rated at less than 10 watts visual peak power output and (2) 40 dB for transmitters rated at 10 watts or more. Under this rule a co-located adjacent channel transmitter can emit signals that are only 40 dB below the peak visual power of the other co-located transmitter. Since these out-of-band emissions are within the authorized band of the desired channel, they could create co-channel interference. Frequency selective filtering cannot be used to resolve this type of adjacent channel interference.

26. We recognized this problem with common carrier MDS operations in the 2.5 GHz band and proposed that emissions appearing on frequencies more than 3 MHz from the assigned channel edge be attenuated at least 60 dB.[27] We believe a similar reduction in emissions is appropriate in the private services. Such a reduction should further reduce the adjacent channel interference potential. Therefore, we are proposing to require all emissions from new OFS 2.5 GHz private radio channel operations appearing more than 3 MHz above or below the band edges to be attenuated at least 60 dB below the peak output power of the transmitter. Again, we request comments on extending the proposal to include existing users, the impact on manufacturers in regard to inventories, and the appropriate time to allow for compliance.[28]

II. REGULATORY ISSUES

A. *Response Channels*

27. Each of the three 6 MHz 2.5 GHz private radio channels has an associated 125 kHz response channel available to be used for communications from the remote stations back to the control station. Where an entity sought to use the response channels, it would receive an individual license, apart from the 2.5 GHz private radio license, to cover such use. While we have licensed numerous entities for the 2.5 GHz point-to-multipoint channels, we have issued very few licenses for the response channels. Because the vast majority of entities licensed for the 2.5 GHz channels use them in a one-way operation to distribute program material, they do not need to use the response channels.

28. We believe additional use could be made of these frequencies if we disassociate them from the 6 MHz channels. This raises the question, however, of what is the best use of these response channels. For the purposes of this *Notice*, we propose to disassociate these three response channels from the 6 MHz channels and make them available for any fixed point-to-point use subject to the interference criteria in Section 94.63.[29] Moreover, we recognize that there may be other operations for which these frequencies can be used. Therefore, we request comments on other possible uses of these three channels. Comments should also address the possibility of splitting the channels as well as the interference criteria that should apply to protect co-channel and adjacent channel operations.

B. *Single Frequency Per Location*

29. In Docket 19671 we stipulated that we would normally assign only one transmit channel per licensee at each location.[30] We took this position because of the limited number of private channels available at 2.5 GHz and the desire to provide for an equitable distribution of frequencies among applicants. We reaffirmed our decision in the *Memorandum Opinion and Order* disposing of the petitions for reconsideration of the *First Report and Order*.[31] However, all three 2.5 GHz private radio channels have now been assigned in most of the major metropolitan areas. We believe this policy has served its intended purpose and is no longer needed. Accordingly, we propose not to restrict the number of 2.5 GHz channels a licensee may have in any one location.

C. *Extended - Limited Network Distinction*

30. The current rules governing assignment of DTS frequencies in the 10.6 GHz band classify licensees as either extended or limited network operators. An extended network is defined as providing DTS service in 30 or more standard metropolitan statistical areas (SMSAs); such networks must be constructed within 60 months of authorization. A limited network serves fewer than 30 SMSAs and must be constructed within 30 months of authorization.[32] As explained below, however, experience with DTS operations suggests that this regulatory distinction may no longer be needed.

31. The present structure of the 10.6 GHz DTS band was based on market projections provided by Xerox, coupled with studies conducted by the National Aeronautics and Space Administration (NASA) to support what became the original common carrier DEMS allocation in 1981.[33] These studies projected significant demand by 1990 for intercity digital transmission services. We adopted the extended/limited network distinction to provide for the anticipated development of nationwide networks. We believed that unless such a distinction existed, smaller DTS systems would proliferate and inhibit the development of large nationwide systems. We believed that interconnecting smaller, independent systems into larger systems or with the telephone network would be difficult because of numerous different protocols, standardized formats and other software functions.[34] When we allocated DTS spectrum at 18 GHz for private systems we did not separate the frequencies into extended and limited categories as we did at 10.6 GHz.

32. The extended/limited network distinction was created to aid common carrier DTS network development, and was designed to compensate for a lack of standardization and interconnection compatibility among carriers. The concept was then merely adopted in the private services for consistency. Concerns regarding standardization and interconnection may no longer be appropriate, at least in the private DTS context. First, private DTS licensees, whose applications show plans to create private networks, may not rely on interconnect arrangements to the extent that common carriers do. Second, technological advancements are breaking down these barriers.[35] Therefore, we see no need to maintain the extended/limited distinction for private services. We propose to remove the extended/limited distinction from the 10.6 GHz allocations for DTS governed by Part 94 of our Rules. Under our proposal, private DTS applicants would be permitted to apply for any 10.6 GHz channel assignment available under Part 94.

D. *Construction Reports and Progress Reports for DTS*

33. At present, our rules provide that, depending on the type of network, a licensee may take up to 60 months to construct a system. The rules also require that the DTS application provide for substantial progress in the early years of construction, and that construction progress be reported every six months until construction is completed.

34. As previously noted, we propose to delete the distinction between limited and extended DTS systems. Our current rules provide that applicants for limited systems must construct their systems within thirty months whereas applicants for extended systems must construct their systems within sixty months. Since we propose to delete this distinction, we will also modify our construction period for DTS systems. To this end, we wish to encourage applicants to place their systems, once licensed, in operation as quickly as possible. We propose, therefore, to modify our rules to require construction of all stations within thirty (30) months of the date of grant of a DTS authorization. This period should give applicants ample time to place their stations in operation. An applicant concerned that this period will be insufficient can at the time of filing its application request, and provide justification for, an extended construction period. In conjunction with this approach, we also propose to delete the requirement that licensees file six month progress reports. Under our new approach to licensing DTS operations, these six month progress reports appear to be an unnecessary burden. Pending the outcome of this proceeding, however, progress reports will continue to be required of existing licensees.

E. Video Entertainment and Other Uses at 18 GHz

35. In Docket 19671 we concluded that the distribution of video entertainment on frequencies below 21.2 GHz should be limited to the three OFS channels at 2.5 GHz. At that time, we concluded (1) that the distribution of video entertainment would not be feasible in the OFS bands below 21.2 GHz due to the heavy occupancy of those bands by existing point-to-point systems and (2) that the number of channels available for point-to-multipoint distribution operations was adequate to accommodate the demand for commercial distribution of video entertainment material. Since that time, however, we allocated frequencies in the 18 GHz band for point-to-multipoint, DTS operations. Further, there has been an increasing interest in frequencies below 21.2 GHz for commercial distribution of video entertainment material.[36]

36. We now propose to use the same flexible approach we use at 2.5 GHz in the 18 GHz band; we propose to allow distribution of video entertainment on private point-to-multipoint 18 GHz frequencies.[37] Allowing transmission of video entertainment on these frequencies, we feel, is consistent with our objective of promoting the full utilization of the spectrum. We also solicit comments on whether we should relax the digital usage restriction on data transmissions in the 10.6 and 18 GHz bands[38] and leave it up to the licensee to choose other comparable efficient technologies.

37. We also ask for comments on whether we should initially limit the number of frequencies in the 18 GHz band a "video" licensee can obtain at one location. Our current policy at 2.5 GHz is to assign only one transmit channel per licensee at each location. This limitation was designed to ensure some type of equitable distribution of the limited number of frequencies when they were first made available.[39] There are only five frequency pairs available for point-to-multipoint operations in the 18 GHz band. We initially believe that a limitation similar to that in the 2.5 GHz band is appropriate. Channels at 18 GHz are available in pairs to allow for two-way paths. Many users, however, have only one-way circuits. Therefore we also request comment on possible uses for the other half of the frequency pair (user frequencies) in a one-way video operation.[40] Commenting parties should address interference criteria and licensing issues. We also note that 18 GHz DTS channels are licensed for ten megahertz of bandwidth. Video operations, however, may require less bandwidth. Comments are invited on this matter. For example, commenters may address whether video channels should be licensed for less than ten megahertz leaving the remainder of the channel available to other licensees. Another alternative would be to permit licensees to lease the portion of the channel not used for video.

III. REDUCED FILING PERIOD FOR MUTUALLY EXCLUSIVE APPLICATIONS

38. We further propose in this item to reduce the period for filing an application which will be treated as mutually exclusive, from 30 days of the issuance of the public notice of the initial filing to one day. In other words, we propose that frequencies would be issued on a first-come, first-served basis, unless two applications were received on the same day for only one available channel. Our experience has shown that the 30 day filing period has resulted in significant delays in service availability and considerable confusion.[41] Reducing the filing period to one day, however, would expedite processing of Part 94 applications, thus enabling licensees to commence operations sooner. It also would promote administrative efficiency, because it would likely reduce the number of instances where complicated exclusivity issues arise. We believe that, in some instances, the extended 30-day filing period for determining mutual exclusivity artificially stimulates users to file competing applications, since potential applicants may misjudge their communications needs in a rush to preserve their access to spectrum in a given frequency band and area. We believe that the number of applications filed for such reasons will be fewer if the time for filing is reduced.

39. We believe that a first-come, first-served approach, as reflected in our proposal, is equitable and legally sound.[42] It is consistent with the approach that was used in filing certain 800 MHz applications.[43] It will permit communications users to file applications based on current needs and reduce the level of uncertainty that has existed in the past. It will encourage spectrum efficiency by encouraging users to find ways to co-exist.[44] It will not prevent those opposed to the application from filing petitions to deny. We will continue to place all OFS applications on public notice when filed and will continue to accept petitions to deny for a period of 30 days after the public notice, as mandated by the Act.[45] Upon closing the window, all subsequent competing applications will be rejected. Should an application subsequently be denied, the channels will again be made available only to applicants filed subsequently to the reopening of the window due to the previous rejection.

40. Relevant case law does not preclude our proposed action. In *Ashbacker v. FCC*, for example, the Court required that once the FCC had determined that applicants were mutually exclusive, it was required to treat them

evenhandedly. However, the Court did not address how to determine mutual exclusivity in the first place, thus in no way restricting the Commission's discretion: "We only hold that where two bona fide applications are mutually exclusive, the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him." 326 U.S. 327, 333 (1945). Similarly, in *Ridge Radio v. FCC*, the Court determined that the Commission may enforce rules that it has created, but when it gives public notice of a cut-off date for mutual exclusivity, fairness requires that it must be clear about exactly what it is being cut off. 292 F.2d 770, 773 (D.C. Cir. 1961). We interpret this to mean that the Commission may choose any reasonable filing period it believes appropriate, as long as the period is clear and unambiguous and all applicants are treated equally. In this instance, all potentially affected persons will be accorded fair notice of the proposed cut-off rule change, an opportunity to comment, and full notice of any adopted rule 30 days before it becomes effective. More importantly, they will be permitted to apply for any of these channels under our existing cut-off procedures until and including the date that the new rules become effective. Under these circumstances, we conclude that all legal requirements necessary to accomplish this change will be met. Comments are requested on this particular proposal in terms of its reasonableness, usefulness, and applicability to all OFS applications.

INITIAL REGULATORY FLEXIBILITY ANALYSIS REASON FOR ACTION

41. The Commission believes that its rules governing point-to-multipoint operations in the 2.5 GHz, 10.6 GHz, and 18 GHz bands should be updated to improve operations in these bands, increase spectrum efficiency, reduce the strain on Commission resources, reduce the burden on applicants and licensees and speed the provision of service by expediting license grants. In order to accomplish this, the Commission proposes to revise the technical and procedural rules governing these three bands. These rules require fine tuning now that we have gained some experience with OFS operations in these bands. We propose adjacent and co-channel interference criteria, less restrictive technical operating standards, and changes regarding emission standards, frequency tolerance requirements, uses of response channels and the number of channels permitted per licensee per location. Further, we propose to streamline our rules governing private digital termination systems (which are designed to transmit high speed data and documents) in order to encourage their development, to expand the uses allowed at 18 GHz to include video entertainment, and to adopt a reduced filing period for determining mutual exclusivity for Part 94 applications.

LEGAL BASIS

42. The action proposed is in furtherance of Sections 4(i), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended.

Reporting, recordkeeping and other compliance requirements

43. No new requirements will be imposed upon licensees in these bands. The Commission is, however, proposing to delete an existing reporting requirement.

Federal rules which overlap, duplicate, or conflict with this rule.

44. None

Description, potential impact, and number of small entities affected.

45. Developing more precise rules and guidelines is expected to result in more efficient use of the spectrum thus enabling more people to be served. Further, establishing a co-channel mileage separation should reduce user licensing costs. Adopting a reduced filing period should limit the number of competing applications thereby expedite the licensing process and reducing Commission costs. Finally, additional users in the bands will create a demand for new equipment which should favorably impact on equipment manufacturers.

Any significant alternative minimizing the impact on small entities and consistent with the stated objectives.

46. Several significant alternatives are considered in this *Notice*. *See* , for example, paragraphs 12, 13, 16, 21, 22, 28, 34 and 36.

PAPERWORK REDUCTION ACT STATEMENT

47. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public. Rather, if adopted as proposed the licensing burden on the public could be reduced.

PROCEDURAL MATTERS

48. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Secion 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

49. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's secretary for inclusion to the public record. Any person who makes an oral *ex parte* presentation that presents data

or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

50. Authority for issuance of this *Notice of Proposed Rule Making* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before **July 18, 1988,** and reply comments on or before **August 2, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

51. In accordance with the provisions of Section 1.419 of the Commission's Rules, 47 C.F.R. Section 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters at 1919 M Street, N.W., Washington, D.C.

52. For further information concerning this Rule Making contact Herb Zeiler or Gay Ludington, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, Room 5126, Federal Communications Commission, Washington, D.C. 20554, (202) 634-2443.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTES

[1] Part 94 sets forth the regulations governing operation of stations in the Private Operational-Fixed Microwave Radio Service (OFS).

[2] A point-to-multipoint system generally consists of one or more nodal or master stations and a number of fixed remote receivers or transceivers. Remote receive sites in the private services are not licensed.

[3] The 900 MHz bands (*i. e.*, 928/952 MHz and 956 MHz) available for multiple address service (point-to-multipoint) operations were the subject of a separate proceeding. *See* Notice of Proposed Rule Making, PR Docket 87-5, 52 Fed. Reg. 4161 (1987), 2 FCC Rcd 553 (1987); Report and Order, 53 Fed Reg. 11855, April 11, 1988.

[4] The Commission adopted a Public Notice establishing a co-channel separation standard of 50 miles. Under this policy, any application proposing a transmitter site that was less than 50 miles from a co-channel transmitter site specified by another applicant was considered to be mutually exclusive with that other application. Under the procedure adopted, applicants could submit a detailed engineering analysis to demonstrate that an exception to the 50-mile standard was warranted. *See* Public Notice, FCC 85-12, released January 15, 1985.

[5] *See* Public Notice, Mimeo 1207, released December 6, 1983. The cut-off date was December 31, 1983.

[6] A digital termination system (DTS) is designed for distributing high-speed data and typically consists of a central nodal station that transmits digital data to multiple outlying user stations. User stations are capable of transmitting information back to the central nodal station. User stations are not separately licensed. Our primary focus here is on DTS frequencies in the 18 GHz band. This is because DTS 10.6 GHz frequencies, prior to being available for private DTS operations, were allocated for common carrier DTS use. As soon as the frequencies were made available for common carrier operations, we made numerous grants for nearly all of the 10.6 GHz DTS frequencies in most of the top 100 Standard Metropolitan Statistical Areas. As a consequence, there are very few of these channels available for private DTS operations in the major metropolitan areas.

[7] *See* 47 C.F.R. § 94.193(b) (1986).

[8] These criteria were in the rules at the time of the allocation and were developed for point-to-point operations.

[9] The radio horizon is that distance that a radio signal can travel before it is lost to space because of the curvature of the earth.

[10] Existing stations with antenna heights in excess of 300 feet will not receive additional protection in excess of that provided by the 50-mile standard.

[11] *See* First Report and Order, Docket 80-113, 49 Fed. Reg. 25456 (1984).

[12] Along with this standard we are assuming a maximum antenna height (AAT) of 300 feet and a service operating area of 12 miles. In cases where the applicant proposes to construct a station with an antenna height greater than 300 feet, we are proposing to take the same approach we did at 2.5 GHz and require an interference analysis (see discussion in paragraph 11).

[13] *See* Public Notice, FCC 85-13, released January 15, 1985.

[14] For digital operations, the answer actually depends to a large degree on the threshold-to-interference (T/I) ratio of the equipment used and the associated path fade margin. The T/I ratio is defined as the ratio of desired to undesired signal that degrades performance from a bit error rate (BER) of 10^{-6} to 10^{-5}. This ratio is normally supplied by equipment manufacturers.

[15] C/I = T/I + Fade Margin

[16] In the past we have allowed short-spaced assignments in cases where the applicant believes the proposal is technically and economically feasible. *See* Report and Order, Docket 82-593, 49 Fed. Reg. 171505 (1984).

[17] This is the same co-channel protection ratio MDS applicants must provide existing 2.5 GHz operations. *See supra*, note 11.

[18] *See* Report and Order, Docket 14744, 28 Fed. Reg. 8103 (1963).

[19] *See* Report and Order, Docket 19493, 45 FCC 2d 616 (1974).

[20] *See* 47 C.F.R. § 94.193(b) (1986).

[21] *Id.*

[22] This notification procedure implies that there may be adjacent channel interference and that upon proper showing we would deny an adjacent channel application because of harmful interference to an existing operation. Therefore entities in favor of a notification requirement should also comment on the appropriate criteria necessary for determining interference (i.e., C/I ratio). Further, comments on this issue should address applying this same rationale to adjacent channel operations in the 2.5 GHz band.

[23] *See* 47 C.F.R. § 94.95(e) (1986).

[24] Broadcast television stations are required to maintain their visual carriers within + 1 kHz of their nominal frequency. 47 C.F.R. § 73.687(c)(1) (1986).

[25] Inaccuracy in operating frequency increases the potential to interfere with other systems operating on adjacent channels. Tolerance related shifts in a transmitter's operating frequency can also result in a form of co- channel interference called carrier beat interference.

[26] Further Notice of Proposed Rule Making and Notice of Inquiry, Docket 80-113, 49 Fed. Reg. 25486 (1984).

[27] *Id.*

[28] The proposed change to the emission standard is particularly important in view of the fact that no adjacent channel protection criteria are being proposed.

[29] Under this proposal, the frequencies could still be used as response channels in a 2.5 GHz two-way point-to-multipointsystem.

[30] *See* First Report and Order, Docket No. 19671, 86 FCC 2d 299 (1981).

[31] *See* Memorandum Opinion and Order, Docket No. 19671, FCC 83-245, 48 Fed. Reg. 32578 (1983).

[32] *See* Section 94.185(c).

[33] *See* First Report and Order, Docket 79-188 (Digital Electronic Message Service), 86 FCC 2d 360 (1981). DTS describes the facilities to provide DEMS, which describes the general common carrier service.

[34] *Id.* at 367-371.

[35] *See* Report and Order, CC Docket 85-229 (Third Computer Inquiry), Mimeo No. 36693, released June 16, 1986; and Supplemental Notice of Proposed Rule Making, CC Docket 85-229, Mimeo No. 36694, released June 16, 1986. In that proceeding we mandated the creation by AT&T and the Bell Operating Companies of comparably efficient interconnection and open network architecture.

[36] On June 8, 1987, Todd Communications filed a petition (RM-6014) to permit private commercial entities access to the 18 GHz band for the transmission of video entertainment material. Since this petition deals primarily with point-to-point frequencies it will be handled in a separate proceeding.

[37] We are not proposing to allow video at 10.6 GHz since private use of these frequencies is very limited and the standard bandwidth is not sufficient to permit video operations.

[38] *See* § 94.183, 47 C.F.R. § 94.183.

[39] We are proposing to eliminate this restriction at 2.5 GHz in this proceeding since we believe it has served its intended purpose. *See* para. 29, *supra.*

[40] In the 2.5 GHz band almost all the video operations licensed were licensed for the 6 megahertz channels and not the associated response frequencies.

[41] *See* , for example, *Reuters v. FCC*, 781 F.2d 946 (D.C. Cir. 1986) where the D.C. Circuit concluded that despite its best intentions, the Commission erred in rescinding a grant to Reuters of 13 microwave licenses. The Commission had rescinded the licenses because it found that another applicant, Associated, had filed applications which should have been, but had not been, considered mutually exclusive with those of Reuters. The Court, however, found that the original grant to Reuters had been made entirely within the Commission's Rules and should stand.

[42] We previously made a similar proposal in our pending proceeding concerning sharing of government and non-government spectrum in the 900 MHz band. *See* Third Notice of Proposed Rule Making, Gen. Docket 82-243, 2 FCC Rcd 1608 (1987), para. 11 and n.6. *See also* Report and Order, Docket 84-750, 50 Fed. Reg. 19936 (1985), regarding the administrative sufficiency of a similar approach involving vacant FM channels.

[43] Specialized Mobile Radio (SMR) frequencies available under Subpart S for reassignment used to be subject to a one day window. The first application received after the channels became available for reassignment opened the filing window. The window stayed open only for the day on which the first application was received. *See* Public Notice of January 6, 1986, Mimeo No. 1805. The procedure was changed in the Report and Order in Docket 86-404.

[44] Many OFS applicants avoid the filing of mutually exclusive applications by prior coordination. Technical parameters are often modified to accommodate systems that might otherwise be in conflict. In cases where conflicts do arise, the lottery procedure which we have utilized in the past will resolve matters.

[45] Section 309 of the Communications Act, 47 U.S.C. 309, which governs actions upon applications, contains the requirement that actions granting applications shall be made only after 30 days have elapsed. *See* 47 U.S.C. 309(b). That section reflects Congressional intent to permit petitions to deny. The legislative history of 309(b) states:

> "This provision is not presently included in the Act. It is designed specifically to give interested parties an opportunity to learn of the application and to file a 'petition to deny' as provided for by the proposed subsection (d)." H. Rept. No. 1800, 86th Cong., 2nd Sess., *reprinted* 1960 U.S. Code Cong. and Ad. News 3516, 3518-19.

APPENDIX

Parts 1 and 94 of the Commission's rules are proposed to be amended as follows:

A. Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4, 303, 48 STAT. 1066, 1082 as amended; 47 U.S.C. 154, 303; implemented by 5 U.S.C. 552, unless otherwise noted.

2. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§1.227 Consolidations

* * * * *

(b) * * *

(4) This paragraph applies when mutually exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (*See* 1.972). An application which is substantially amended, (as defined by 1.962(c)), will, for the purpose of this section, be considered to be a newly filed application as of the receipt date of the amendment. Except for applications filed under Part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at Part 1, Subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day.

* * * * *

B. Part 94 - Private Operational - Fixed Microwave Service

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 STAT., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. The table of contents in Part 94 is amended by deleting reference to Subpart F.

3. Section 94.3 is amended by deleting the definitions for Extended Network and Limited Network, revising the definition for Internodal Link, and adding a definition for Nodal Station. 94.3 Definitions.

* * * * *

Internodal Link. A point-to-point communications link used to provide communications between Nodal Stations or to interconnect Nodal Stations to other communications media.

* * * * *

Nodal Station. The central or controling station in a radio system operating on point-to-multipoint frequencies in the 2.5, 10.6, and 18 GHz bands.

* * * * *

4. Section 94.15 is amended by revising paragraph (i) to read as follows:

§94.15 Policy governing the assignment of frequencies.

* * * * *

(i) Licensees and applicants for Digital Termination Systems are not subject to the provisions of paragraphs (a) through (h) of this section.

* * * * *

5. Section 94.25 is amended by deleting the word [Reserved] in paragraph (e) and adding the following text:

§94.25 Filing of applications.

* * * * *

(e) Application for point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands:

(1) A separate application form must be filed for each Nodal Station. Each Nodal Station application must specify the service area that will be served by the station in terms of a distance radius or other geographical specification, and, if applicable, the Standard Metropolitan Statistical Area (SMSA) being served.

(2) If proposing a Digital Termination System, all applicants must submit as part of the original application a detailed plan indicating how the bandwidth requested will be utilized. In particular the application must contain detailed descriptions of the modulation method, the channel time sharing method, any error detecting and/or correcting codes, any spatial frequency reuse system and the total data throughput capacity in each of the links in the system. Further, the application must include a separate analysis of the spectral efficiency including both information bits per unit bandwidth and the total bits per unit bandwidth.

6. Section 94.51 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§94.51 Time in which station must be in operation.

(a) Except as provided in paragraphs (b) and (c) of this section, a station authorized under this Part must be in operation within 12 months from the date of grant or the authorization cancels automatically and must be returned to the Commission. Requests for extension may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed 12-month period. Such requests must be submitted no later than 30 days prior to the end of the 12-month period to the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

(b) Sations licensed on point-to-multipoint frequencies in the 10.6 GHz and 18 GHz bands must be completely constructed and fully operational in accordance with their most recent application within 30 months of grant, or the authorizations for stations not meeting the above cancel automatically and must be returned to the Commission.

(c) Stations authorized under Section 94.93 must be in operation within 36 months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

7. Section 94.61(b) is amended by revising footnote 24 and adding a new footnote 30 to the band 18,820-18,920 to read as follows:

§94.61 Applicability

* * * * *

(b) * * *

Frequencies in this band are shared with the Common Carrier services for Digital Termination Systems. The available frequencies are indicated in Section 94.65.

* * * * *

Frequencies in this band are available for point-to-multipoint transmissions, including video.

8. Section 94.63 is amended by revising paragraphs (a) and (b), and adding paragraph (d)(6) and (7) to read as follows:

§94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 6,425-6,525 MHz, 10,550-10,680 MHz, 17,700-19,700 MHz, 21,200-21,800 MHz, 22,400-23,000 MHz, or 38,600-40,000 MHz (excluding those frequencies set out in 94.65(i)(1) and (j)(8)), applicants shall follow the prior coordination procedure specified in 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the 2655-2690 or 12,500-12,700 MHz bands, applicants shall also follow the procedures in 21.706(c) and (d) and the technical standards and requirement of Part 25 of this chapter as regards to licensees in the Communication-Satellite Service. *See* also 94.77.

(b) The interference protection criteria for operational-fixed stations, other than those licensed on frequencies set out in Sections 94.65(a)(1), 94.65(f)(1), 94.65(i)(1), 94.65(j)(8), 94.90, and 94.91 are as follows:

* * * * *

(d) * * *

(6) For nodal stations operating in the 2.5 GHz band where the antenna height above average terrain (AAT) is 300 feet or less, a statement that all existing co-channel stations are at least 80 km (50 miles) from the proposed nodal station site. *See* Section 90.309 for determining AAT. If the AAT is greater than 300 feet an interference analysis showing the effect of the proposed station on all existing co-channel stations and pending applications that are located within 20 miles of the proposed station's line-of-sight propagation path. In this case, previously authorized stations and proposed stations where the application is on file at the Commission shall be afforded a carrier to interfering signal protection ratio of at least 45 dB.

(7) For nodal stations operating in the 10.6 GHz and 18 GHz bands where the antenna height above average terrain (AAT) is 300 feet or less, a statement that all existing co-channel stations are at least 56 km (35 miles) from the proposed nodal station site. If the AAT is greater than 300 feet an interference analysis showing the affect of the proposed station on all existing co-channel stations and pending applications that are located within 12 miles of the proposed station's line-of-sight propagation path. In this case, previously authorized stations and proposed stations where the application is on file at the Commission shall be afforded a carrier to interfering signal protection ratio of at least 45 dB.

9. Section 94.65 is amended by revising paragraphs (f), (i), and (j) to read as follows:

§94.65 Frequencies

* * * * *

(f) 2500-2690 MHz

(1) The following frequencies are available for nodal stations in point-to-multipoint systems.

Frequencies (MHz)
2653
2665
2677

(2) The following frequencies are available for point-to-point operations. They may be paired, respectively, with frequencies available under subparagraph (1) of this section for two-way point-to-multipoint systems.

Frequencies (MHz)
2686.9375
2687.9375
2688.9375

(3) Frequencies available under this paragraph are subject to the condition that all stations licensed on the channels must comply with the technical standards set forth in 94.63. Operational-fixed stations authorized in this

band as of July 16, 1971, that do not comply with the above provisions may continue to operate on the frequencies assigned on a coequal basis with other stations operating in accordance with the Table of Frequency allocations. Requests for subsequent license renewals or modifications for such stations will be considered. However, expansion of systems comprised of such stations will not be permitted, except on frequencies allocated under this part.

* * * * *

(i) 10,550-10,680 MHz

(1) The following frequencies are available for point-to-multipoint digital terminations systems.

Channel No.	Nodal Station Frequency band limits MHz	User Station Frequency band limits MHz
4A	10,580.0-10,582.5	10,645.0-10,647.5
4B	10,582.5-10,585.0	10,647.5-10,650.0
19	10,585.0-10,587.5	10,650.0-10,652.5
20	10,587.5-10,590.0	10,652.5-10,655.0
21	10,590.0-10,592.5	10,655.0-10,675.5
22	10,592.5-10,595.0	10,657.5-10,660.0
23	10,595.0-10,597.5	10,660.0-10,662.5
24	10,597.5-10,600.0	10,662.5-10,665.0
7	10,605.0-10,607.5	10,670.0-10,672.5
9	10,610.0-10,612.5	10,675.0-10,677.5

(i) Each station will be limited to one frequency pair per SMSA. An additional channel pair may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. The channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of Section 94.63 are met.

(2) The following frequencies are available for point-to-point operations.

(i) 2.5 MHz bandwidth

Transmit (receive) MHz	Receive (transmit) MHz
10,551.25	10,616.25
10,553.75	10,618.75
10,556.25	10,621.25
10,558.75	10,623.75

(ii) 1.25 MHz bandwidth

Transmit (receive) MHz	Receive (transmit) MHz
10,560.625	10,625.625
10,561.875	10,626.875
10,563.125	10,628.125
10,564.375	10,629.375

(j) 17700-19700 MHz. (Note: stations authorized as of September 9, 1983 to use frequencies in this band may, upon proper application, continue to be authorized for such operations.)

* * * * *

(8) The following frequencies are available for point-to-multipoint systems (DTS or video):

Channel No.	Nodal Station Frequency band (MHz) limits	User Station Frequency band (MHz) limits
25	18,820-18,830	19,160-19,170
26	18,830-18,840	19,170-19,180
27	18,840-18,850	19,180-19,190
28	18,850-18,860	19,190-19,200
29	18,860-18,870	19,200-19,210

(i) Each station will be limited to one frequency pair per SMSA. Additional channel pairs may be assigned upon a showing that the service to be provided will fully utilize the spectrum requested. A channel pair may be subdivided as desired by the licensee.

(ii) A frequency pair may be assigned to more than one licensee in the same SMSA or service area so long as the interference protection criteria of 94.63 are met.

10. Section 94.67 is amended by revising footnote 8 to read as follows:

§94.67 Frequency Tolerance.

* * * * *

For Nodal Station transmitters operating in this band the frequency tolerance shall be 0.0001%.

11. Section 94.73 is amended by revising footnote 6 to read as follows:

§94.73 Power limitations

(a) * * *

The output power of a Digital Termination System nodal transmitter shall not exceed 0.5 watts per 250 kHz. The output power of a Digital Termination System user transmitter shall not exceed 0.04 watts per 250 kHz. The transmitter power in terms of the watts specified is the peak envelope power of the emission measured at the associated antenna input port. The operating power shall not exceed the authorized power by more than 10 per cent of the authorized power in watts at any time.

12. Section 94.75 is amended by revising footnote 3 and adding a new paragraph (h):

§94.75 Antenna limitations

* * * * *

Except as provided for in paragraph (h) of this section.

* * * * *

(h) Antenna standards for Digital Termination Systems.

(1) Nodal transmitting antennas may be omnidirectional or directional, consistent with coverage and interference requirements.

(2) The use of horizontal or vertical plane wave polarization, or right hand or left hand rotating elliptical polarization must be used to minimize harmful interference between stations.

(3) Directive antennas shall be used at all user stations and shall be elevated no higher than necessary to assure adequate service. The user station antennas shall meet the performance standards as specified in Section 21.208(c) and have a minimum power gain of (1) 34 dBi in the 10,550-10,680 MHz bnd and (2) 38 dBi in the 17,700-19,700 MHz band. User antenna heights shall not exceed the height criteria of Part 17 of this Chapter, unless authorization for use of a specific maximum antenna height (above ground and above sea level) for each location has been obtained from the Commission prior to the erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (*See* Part 17 of this chapter concerning the construction, marking and lighting of antenna structures).

13. Section 94.95 is amended by revising paragraphs (a) and (e)(1) to read as follows:

§94.95 Special provisions for operational-fixed stations in the 2500-2690 MHz band.

(a) Emissions and bandwidth. The average power of radio frequency harmonics of the visual and aural carriers, measured at the output terminals of the transmitter, shall be attenuated no less than 60 dB below the peak visual output power within the assigned channel. All other emissions appearing on frequencies more than 3 MHz above or below the upper and lower edges, respectively, of the assigned channel shall be attenuated no less than 60 dB. Should interference occur as a result of emissions outside the assigned channel, greater attenuation may be required.

* * * * *

(e) Frequency tolerance (1) The frequency of the visual carrier shall be maintained within 1 kilohertz of the assigned frequency at all times when the station is in operation.

* * * * *

14. Part 94 is amended by deleting Subpart F in its entirety.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LONG DISTANCE SAVERS, INC. — File No. I-T-C-88-096

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 24, 1988; Released: June 6, 1988

By the Chief, International Facilities Division:

1. On March 16, 1988, the Long Distance Savers, Inc. (LDS) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on March 30, 1988. No comments were received.

2. LDS, a Louisiana corporation, is already providing domestic resale service. It now proposes to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by LDS.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-096 IS GRANTED and LDS is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI Telecommunications Corp.'s Tariff FCC No. 1, between the contiguous U.S. and those points listed in that tariff.

5. Copies of any operating agreements entered into between LDS and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that LDS shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953); *Mackay Radio and Telegraph Co.*, 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

RAM COMMUNICATIONS OF
MASSACHUSETTS, INC.

For authority to establish new base stations in the Public Land Mobile Service) operating on frequency 152.51 MHz at Portland, Falmouth, Saco, Lyman, and Sanford, Maine — File No. 24331-CD-P/L-01-87

and

For authority to establish new base stations in the Public Land Mobile Service) operating on frequency 152.51 MHz at Portsmouth, Stratham and Rochester, New Hampshire — File No. 24344-CD-P/L-01-87

MEMORANDUM OPINION AND ORDER

Adopted May 25, 1988; Released: June 6, 1988

By the Chief, Mobile Services Division:

1. New England Telephone and Telegraph Company (NET) has filed a petition to deny the captioned applications of RAM Communications of Massuchesetts, Inc. (RAM). RAM requests authority to construct two-way facilities to operate on frequency 152.51 MHz at Portland, Falmouth, Saco, Lyman, and Sanford, Maine (Maine application) and at Portsmouth, Stratham, and Rochester, New Hampshire (New Hampshire application).[1] RAM has filed an opposition to the petition, and NET has filed a reply.

CONTENTIONS OF THE PARTIES

2. NET operates on frequency 152.51 MHz in the area proposed to be served by RAM. NET argues that RAM's proposal will cause interference to NET's system. According to NET, RAM's package proposal (*i. e.*, these captioned applications and two other applications for six more stations not the subject of the petition) which is part of RAM's proposal to construct a new 15- transmitter one-way/two-way system on frequency 152.51 MHz in Maine and New Hampshire. NET states that RAM's proposals will create excessive amounts of interference due to simultaneous operation. NET also argues that RAM's operation of the three locations proposed in the New Hampshire application will cause significant co-channel interference to NET's facilities; that RAM acknowledges its proposed Sanford, Maine location presents an interference problem; and that the remaining two Maine application locations could create harmful interference to NET's existing facilities. NET also asserts that RAM has not attempted to resolve potential interference problems.

3. NET further argues that RAM's interference analyses contains no examination of the specific terrain conditions between its proposed station and NET's station and is based on calculations using estimated data. This, according to NET, is insufficient and, thus, the RAM applications must be denied until field testing can be conducted to establish the actual effect on NET of the proposed operations. NET asserts that RAM's interference analyses did not consider NET's extended mobile telephone service area and that four proposed RAM sites will thus generate interference into NET's coverage area. Moreover, NET contends that the RAM applications propose to transmit at the maximum power of 500 watts ERP - whereas NET transmits only at 100 watts ERP - which demonstrates RAM's intention to use its proposed facilities mainly for a wide-area paging operation, which is incompatible with NET's two-way mobile radio usage and will cause NET harmful interference.

4. In response, RAM asserts that NET's interference claims are without merit. RAM contends that it did not conduct an assessment of the impact of the simultaneous keying in its co-channel interference analysis because the Commission's Rules do not require it to do so. RAM disputes that it acknowledged its proposed Sanford facility presents interference problems. RAM also claims that contrary to NET's assertion, the Commission never granted NET the service contour areas shown in the NET-prepared 20 year coverage maps because Commission Rules make clear that NET's 37 dBu contours mark the outer boundaries of its interference-free service area.

DISCUSSION

5. After careful consideration of the facts and arguments presented, we conclude that the petition should be denied.

6. We find that NET's interference claims are without merit. In determining whether harmful interference exists between RAM's proposed facilities and co-channel facilities licensed to NET at Waltham, Massachusetts, the Mobile Services Division (MSD) requested additional information from RAM regarding RAM's New Hampshire application.[2] The MSD requested that RAM provide the specific references and engineering methodology it used to arrive at the height above average terrain (HAAT) in Table MOB-3 of FCC Form 401, Sch. B, and a radial-by-radial interference analysis setting forth the required desired-to-undesired ratio and the actual ratio along the 37 dBu contour of NET's Station KCA671 at the 7.5-degree radial and at intervals of every 2.5 degrees inclusive through the 27.5-degree radial. In addition, the MSD requested specific HAAT data and the effective radiated power for each station at each radial along with its derivation.

7. Based on our review of RAM's proposals and RAM's report supplied in response to the MSD's request, we conclude that RAM's proposals will not cause harmful interference to NET's protected 37 dBu co-channel contours. We further conclude that RAM used sound engineering methodologies in arriving at the HAATs contained in Table MOB-3 and in performing the co-channel interference analyses contained in its New Hampshire application. Our review of the detailed analyses of the additional radials verifies that RAM's proposed

Stratham facility will cause no harmful interference to NET. (We found no reason to request information regarding RAM's Maine application). By contrast, NET has not filed any measurements to establish that it is entitled to protection in an expanded area. While NET argues that it has conducted field-strength measurements over a time period substantially longer than required by the Commission, the data to substantiate that NET's reliable service area goes beyond the reliable service area predicted using the Carey method has not been submitted. Thus, NET's argument that RAM must protect the extended mobile service contour is without merit. The Commission stated that it will protect the service contour (here, NET's calculated 37 dBu contour) as determined by Carey. *See Public Notice*, Mimeo No. 30893, released May 2, 1980. RAM's calculations in its applications have properly utilized Carey determinations. Regarding NET's simultaneous keying arguments, the Commission has never approved a method for calculating interference from multiple transmitters for the public mobile services and does not consider the effects of simultaneous keying. [3]

8. In view of the foregoing, we find RAM to be legally, technically, and otherwise qualified to construct and operate the proposed facilities, and we further find that a grant of its applications will serve the public interest, convenience, and necessity.

9. ACCORDINGLY, IT IS ORDERED that the RAM Communications of Massachusetts, Inc. applications, File Nos. 24331-CD-P/L-01-87 and 24344-CD-P/L-01-87, ARE GRANTED.

10. IT IS FURTHER ORDERED that the petition to deny filed by New England Telephone and Telegraph Company is DENIED.

11. This order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Both applications appeared in the Commission's Public Notice, Rpt. No. PMS-87-36, Mimeo No. 3455, released June 3, 1987, at 2 and 3, respectively.

[2] *See* letter from Kevin J. Kelley to Joseph A. Godles, Esq. (counsel for RAM) (Mar. 25, 1988).

[3] *See , e. g.*, Report No. R-6406, "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service", Carey, Roger B., issued June 24, 1964, at 5:

> "The problem of calculating the cumulative effects of two or more interfering signals was afforded extensive consideration by the VHF Ad Hoc committee; however, the report of their findings was by no means conclusive as to the most acceptable method to be used and was not fully endorsed by the committee." [Footnote omitted].

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166

In the Matter of

Investigation of Special Access Tariffs of Local Exchange Carriers — Phase I

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 1988; Released: May 26, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On November 9, 1988 the Common Carrier Bureau (Bureau) released a Memorandum Opinion and Order requiring local exchange carriers (LECs) to refund by January 8, 1988, excessive television service charges associated with polyethylene shielded video (PSV) cable investment paid by their customers.[1] The *Refund Order* is the subject of petitions for clarification and reconsideration or partial reconsideration filed by the Ameritech Operating Companies (Ameritech), Hughes Television Network (Hughes), the Association of Independent Television Stations, Inc. (INTV), the National Association of Broadcasters (NAB) and the New York Telephone Company (NYT).[2] In addition, NYT petitioned for a stay of the *Refund Order* pending resolution of its petition for reconsideration.[3] Capital Cities/ABC, Inc., CBS Inc., and National Broadcasting Company, Inc. (the Networks) filed an opposition and New England Telephone and Telegraph Company and NYT (NYNEX) filed comments. NYT filed a reply. We have consolidated the petitions, with their responsive pleadings, for consideration here by the Bureau.[4] We grant the petitions of Ameritech, Hughes, INTV, and NAB, and deny that of NYT.

2. The *Refund Order* also required that all prospective recipients of refunds submit to this Bureau's Enforcement Division within 30 days of the release of the *Refund Order* their claims for refund. INTV and NAB requested that the time for complying with this requirement be extended 60 days so that they would have sufficient time to prepare their claims. INTV subsequently requested an additional 30 days.[5] Hughes requested in its petition that it be allowed 30 days after resolution of that petition to file its claim.

3. In Orders released February 19, 1985, March 8, 1985, and January 24, 1986 in CC Docket No. 83-1145, the Commission addressed rate and cost issues arising out of special access tariffs filed on December 2, 1984 by LECs, and initiated a limited special access investigation to focus upon unresolved issues.[6] Following the Commission's determination that the Networks had a valid concern regarding the LECs' inclusion of their full investment in unassigned PSV pairs in the video rate base, a partial disallowance of 50 percent of the PSV cable investment was imposed during the five-month investigation. *February 19 Order* at paras. 42-43. In its *March 8 Order* the Commission required the LECs to keep accounts of their video service revenues to permit refunds if they were found necessary. In a *Designation Order* released May 24, 1985, this Bureau requested information from the carriers regarding their PSV facilities.[7] The Commission's *January 24 Order* found that millions of dollars' worth of PSV cable is not used and has never been used to provide service to video ratepayers. It disallowed 50 percent of the unassigned PSV cable allocated by the LECs to the video service category, or26.7 million, and directed the LECs to file new tariffs reflecting the removal of this investment from their rate base. *Id.* at paras. 117-118.

4. In April 1987, the Networks petitioned the Commission for enforcement of an accounting order in the above-captioned docket and for refunds of excessive television service charges paid during the investigation of subsequently disallowed investment in PSV cable.[8] The petitioners requested that the LECs be required to refund, with interest, the difference between the rates that were charged during this time, and the rates that would have been charged had the26.7 million disallowance been in place. On November 9, 1987, this Bureau released the *Refund Order* requiring them to do so.

II. THE PLEADINGS

A. *Petitions for Reconsideration or Clarification*

1. Ameritech Petition

5. Ameritech states that Michigan Bell should be excused from the refund requirement because its video rates were not excessive, having been purged of the subsequently disallowed PSV cable investment by its July 1985 tariff filing.[9] On this basis, Ameritech, states, it was granted a waiver of the Commission's disallowance orders for Michigan Bell.[10] It further states that the *Michigan Waiver Order* found that Michigan had made a *prima facie* case that its rates already reflected the PSV disallowance required by the Order. *Id.* at para. 10. Ameritech argues that to impose a refund requirement now, for rates found to reflect the disallowance adequately, would be inappropriate. Ameritech notes that neither the Networks nor any other party has disputed this conclusion. Ameritech asserts that this Bureau's *Refund Order* finding of untimeliness with regard to Michigan Bell's argument that it should not pay refunds fails to take cognizance of the *Michigan Waiver Order*. Ameritech therefore bases its petition for reconsideration on three factors: (1) the factual error of this Bureau's assumption that Michigan Bell's video rates during the refund period were based on PSV investment that was later disallowed; (2) the fact that the imposition of a refund requirement would constitute a confiscatory penalty, in excess of the Commission's statutory authority; and (3) this Bureau's mischaracterization of Michigan Bell's arguments as an untimely and irrelevant petition for reconsideration of the PSV investigation.

2. Hughes, INTV and NAB Petitions

6. Hughes, INTV, and NAB assert that the *Refund Order* is too narrowly drawn, in two respects. First, they argue that it orders refunds only to the Networks, and not to independents. Second, they contend that the *Refund*

Order requires that refunds be made through AT&T. This requirement, according to these petitioners, ignores the fact that some video service arrangements involve only the LEC provider and the customer user, without the intervention of AT&T, so that those refunds should be paid directly. In addition, both INTV and NAB request that they be allowed 90 days after the resolution of their petitions for reconsideration to prepare their claims for refund;[11] Hughes requests a 30-day period for this purpose.[12]

3. NYT Petition

7. NYT argues that this Bureau failed to consider thoroughly its arguments, put forward in the *Refund Order* proceeding, that it should be excused from the refund requirement. NYT states that the Commission found, in its *January 24 Order*, that .a26.7 million disallowance was necessary, but did not order any refund of past video rates. Further, NYT argues, the Commission stated that its calculation of the26.7 million amount was imprecise, and would be adjusted if any LEC quantified the correct amount of PSV investment in its rate base or demonstrated that its PSV cable pairs had been put to alternate use. NYT Petition at 4 (citing *Janaury 24 Order* at para. 41, n. 68). NYT submits that it did conduct such a study, in the first ten months of 1986, and found that it had undercharged its video users by1.8 million. NYT states that it submitted this study in October 1986 with its annual 1987 access tariff filing in support of its proposed 1987 video service rates. *Id.* at 4-5. While NYT does not seek to recover this loss, it argues that the Commission's disallowance was substantially overstated, and that the imposition of a requirement to refund video service charges from the period covered by the study would be inequitable. NYT asserts that this Bureau erred in its findings that: (1) NYT did not raise the argument that a video refund would result in a windfall to the Networks; (2) NYT cannot now challenge a refund because it did not challenge the Commission's disallowance order (*January 24 Order)* ; and (3) NYT's special study of PSV investment was untimely with regard to the refund proceeding.

8. NYT asserts, first, that the *Refund Order* statement, at para. 21, that the LECs did not argue that a refund would constitute a windfall to the video user parties is simply untrue, as NYT made that very argument. NYT states that it demonstrated, by reference to its PSV study, that the Commission's calculations of PSV disallowance, both in the interim period and in its final determination of26.7 million, were substantially overstated. NYT contends that no serious question has been raised as to the accuracy and reliability of its study and the study's results.

9. NYT next argues that it does not seek to challenge the Commission's *January 24 Order* disallowance. NYT asserts that the argument made by the Networks and adopted by the Bureau – that NYT seeks reconsideration of the Commission's disallowance Order through reliance on the NYT PSV investment study, and that both the study and the attempt to gain reconsideration are untimely – are simply wrong. NYT states that it has fully complied with the *January 24 Order* by including in its subsequent tariff filings the disallowances that order prescribes. NYT could not have argued against a refund at any earlier stage of the proceeding, it contends, since no refund had been ordered at any earlier stage.

10. Finally, NYT says that its PSV investment study and its equitable arguments are presented in a timely fashion and should compel the decision that the Networks are due no refund from NYT. NYT states that its PSV study was authorized and encouraged by the Commission in the *January 24 Order*, and was submitted six months before the Networks filed their petition for a refund. NYT complains that, while this Bureau in its *Refund Order* rejected NYT's study and its arguments as untimely for the purpose of excusing NYT from a refund obligation, we failed to support that conclusion.[13]

B. *Oppositions and Comments*

11. The Networks oppose, and NYNEX comments upon, the petitions for reconsideration. The Networks state that NYT's petition merely reiterates arguments already made. Network Opposition at 6-7. They state also that NYT's "special study" was belated for use in this proceeding, as the study was not even begun until six months after the Commission requested data.[14] Further, the Networks argue, when the Bureau directed the BOCs to allocate among themselves the53.5 million of unused PSV cable investment, NYT voluntarily accepted responsibility for6 million. Not only should NYT not be allowed to disavow what it has previously admitted, assert the Networks, but the Bureau should not allow6 million to be removed from the total pool to be allocated among the BOCs. *Id.* at 8-9. The Networks conclude that individual carriers must be required to pay refunds based upon the disallowance allocation factors which they themselves collectively developed.

12. The Networks argue further that NYT's study, even if it had been timely submitted, does not provide a basis for reconsideration. Challenging the NYT study as a collection of conclusory findings without supporting data, the Networks state that this study fails to provide the information originally requested by the Bureau in its *May 24 Order*. *Id.* at 11. They also argue that the Commission's allowing NYT's 1986 annual access tariffs, to which the study was appended, to become effective does not constitute acceptance or approval of the study. The Networks contend that NYT's attaching the study to its tariff filing rather than submitting it in this proceeding diminished the opportunity of parties in this proceeding for notice and comment.

13. The Networks note further that NYT participated in the NECA Special Access Pool during Phases I and II of the Refund Period, and that this participation belies NYT's claims that its rates during the Refund Period overstated the PSV disallowance. *Id.* at 12-14. The Networks argue that NYT's participation in the NECA pool during Phases I and II resulted in its recovering higher revenues than it would have if it had charged rates based on its own cost of service. They state that NECA's rate-averaging process failed to take into account the lower television service costs experienced in the states most heavily used by the Networks (including New York). The Networks attach an analysis of NYT television service rates that indicates that NYT's rates from April 1985 to December 1986 (Phase I, Phase II, and part of Phase III) were higher than the "corrected" rates that became effective in January 1987. *Id.* at 15 and Appendix A. Finally, the Networks state that if the Commission is to base its determination primarily on equitable considerations, as NYT insists, then the Commission must consider that while the Networks' claim is based only on a specific

period of time and a specific amount of disallowed investment, television service rates were also overstated due to excessive PSV investment from the 1960's until the April 1985 disallowance. *Id.* at 16.

14. The Networks argue further that Ameritech's petition to exempt Michigan Bell from refund obligations should be denied as to Phases I and II, and is moot as regards Phase III. *Id.* at 16-17. The Networks contend that Michigan Bell's Phase I television service rates reflected its share of the21 million disallowance, and that its Phase II rates reflected no disallowance at all. *Id.*

15. In its comments, NYNEX characterizes the Bureau's *Refund Order* as applying retroactively the Commission's *January 24 Order* disallowance. NYNEX Comments at 1. NYNEX does not oppose Ameritech's assertion that Michigan Bell should be exempted from the refund obligation, nor the inclusion of the independent television users as recipient parties. NYNEX maintains, however, that the Bureau's determination on reconsideration that NYT owes no refund to the Networks should apply also to the independents' claims against NYT. *Id.* at 2-3.

C. *NYT Reply*

16. NYT also submits reply comments to the oppositions to its petition. NYT argues that nothing in the Commission's Rules, the Communications Act or Commission precedent requires the dismissal of its petition for reconsideration, and that the Commission should consider all facts relevant to the question of whether NYT owes a refund. NYT Reply at 2-3. NYT asserts again that its PSV study was timely filed and provides sufficient grounds for reconsideration of the *Refund Order*, and that NYT's participation in the NECA pool does not alter the fact that its video customers received a windfall during the refund period.[15] *Id.* at 4-6. NYT discusses the "dilution," as a result of pooling, of the windfall effect from its overstated PSV disallowance. NYT states that its participation in the NECA pool meant that its overstated disallowance was spread over all video service users obtaining service under the NECA tariffs. (Thus the windfall received by a NYT-only video customer was diluted, and a non-NYT video customer could also receive some benefit.) NYT calculates that nationwide video service users like the Networks experienced an offset of the dilution and the benefit, so that it is likely that they received the full benefit of the windfall despite the pooling process. *Id.* at 6-7. NYT also takes issue with the Networks' calculation of its revenue differential and their analysis of video service rate trends. *Id.* at 7-9.

III. DISCUSSION

17. The Commission found in its *January 24 Order* that the LECs' inclusion in their rate bases of PSV cable that was not used and useful was unjustified. The procedures set forth in Section 205(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 205(a) – suspension and investigation followed by an accounting order – were followed, and the final findings of the Commission were released in the *January 24 Order*. This Bureau's *Refund Order* then instructed the LECs to act upon the Commission's findings by refunding to television users any amounts that were based upon investments later found not justified, beginning from the Order suspending rates for investigation. Now we are faced with arguments regarding three specific aspects of that implementation Order.

18. Ameritech's arguments with regard to the exemption of Michigan Bell from the requirements of the *Refund Order*, and its reference to the *Michigan Waiver Order*, are well taken, and Ameritech's petition for recon- sideration will accordingly be granted.

19. The arguments put forward by Hughes, INTV, and NAB in their petitions are similarly well-founded. The terms of the *Refund Order* make clear that all television users should be recompensed for any overpayments based on later-disallowed PSV cable investments. Petitioners argue that the ordering clauses narrow this requirement so that it defines as recipients only the Networks, and applies only to payments made through AT&T. We state unequivocally here, in clarifying the ordering clauses of the *Refund Order*, that all television user parties that were overcharged based on later-disallowed PSV cable investment must be reimbursed, and that overpayments made directly or through an intermediary other than AT&T are included and should be reimbursed via the same routes originally used in making payments.[16]

20. With regard to NYT's argument that it should be excused from any refund obligation, the arguments made here are the same as those made earlier, and we continue to find them unpersuasive. The proceeding in which the PSV cable investment disallowance was calculated was finalized by the *January 24 Order* ; subsequent orders have simply implemented those findings and established procedures. A series of orders prior to the Commission's January 1986 finding that26.7 million must be disallowed sought to calculate the exact amount of disallowance, and requested the LECs' help to do so. No LEC came forward with the requested information.

21. NYT initiated its "PSV study" some six months after the Commission required this additional information from the local exchange carriers. Further, NYT submitted the results of its study in a different proceeding – the annual 1987 access tariff filings – with no notice to the Commission or to the parties here that it would seek to rely upon that study in this proceeding. Meanwhile, NYT sought neither reconsideration nor clarification of the Commission's determination of the disallowance amount, but participated in the calculation of LEC shares in the disallowance.

22. Now NYT seeks to disavow its own previously-calculated obligation, as described in filings cited by the Networks.[17] Having declined the Commission's instructions to provide additional information,[18] NYT now seeks to apply retroactively a study begun after the Commission's final decision, and to adjust a refund calculation which it did not previously challenge.[19] As a by-product, NYT would deprive the recipient parties of more than a quarter of the overpayments the Commission has determined are due them.[20]

23. NYT states that it does not seek to modify the Commission's calculations from the *January 24 Order*, as that would clearly constitute an untimely petition for reconsideration. Since NYT accepts the calculations of the *January 24 Order*, and in view of NYT's own March 1986 filing acknowledging its6 million share of the total disallowance, the instant petition for reconsideration and clarification appear to be gratuitous. We agree with NYT that its study was timely undertaken and timely filed for the purpose for which it was intended and which it has adequately served – to support NYT's video rates in its 1987 annual access tariff filing. The study was not, however, submitted in this PSV investigation, or submitted at

a time that would have made it applicable to this proceeding, or evaluated by the Commission or the parties in this proceeding. NYT's reliance on it for a modification of the conclusions of the PSV investigation is therefore misplaced.[21]

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED that the Petition for Reconsideration and Clarification of New York Telephone Company in this matter IS DENIED.

25. IT IS FURTHER ORDERED that the Petitions for Reconsideration or Partial Reconsideration of Ameritech Operating Companies, Hughes Television Network, the Association of Independent Television Stations, Inc., and the National Association of Broadcasters ARE GRANTED to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, DA 87-1591, 2 FCC Rcd 6847 (1987)(*Refund Order*).

[2] Ameritech, Hughes and INTV filed petitions for reconsideration, NAB filed a petition for partial reconsideration, and NYT filed a petition for reconsideration and clarification.

[3] This request for stay was rendered moot by our determination that the refund calculations warranted further study.

[4] Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Telephone Company (US West) also submitted an application for review of the Order. Pursuant to Section 1.104(c) of the Commission's Rules, 47 C.F.R. § 1.104(c), the Commission will consider the application for review.

[5] These requests for extensions of time were granted by Bureau Orders released on January 12, 1988, DA 88-11, and February 8, 1988, DA 88-157.

[6] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-70, released Feb. 19, 1985 (*February 19 Order*) ; Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-100, 2 FCC 2d 1007 (1985) (*March 8 Order*) ; Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, FCC 86-52, released Jan. 24, 1986 (*January 24 Order*).

[7] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 4726, released May 24, 1985 (*Designation Order*).

[8] The petitioners divided the refund period -- April 22, 1985 through March 31, 1986 -- into three periods. The first is April 22 to August 1, 1985, when the disallowance of half of the estimated PSV cable investment, or21 million, was reflected in video rates. The second period is August 2 to September 30, 1985, when the suspension had expired, and no disallowance was in effect. (The carriers returned to their pre-suspension video rates). In the third period, October 1, 1985 to March 31, 1986, the LECs used video rates from the annual 1985 access tariff filings which were in effect; these reflected no disallowance.

[9] Michigan filed video rates that disallowed 361,680 for unused PSV cable investment. The methodology suggested by the Commission in a Memorandum Opinion and Order released February 21, 1986 resulted in a disallowance of only257,663 for Michigan.

[10] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 86-166, Phase I, Memorandum Opinion and Order, released Mar. 14, 1986 (*MichiganWaiver Order*).

[11] Both INTV and NAB petitioned for and were granted a 60-day extension of the *Refund Order*'s January 9, 1988 deadline for filing claims. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, DA 88-11, released Jan. 12, 1988. INTV subsequently requested and was granted an additional 30 days, setting its filing date at March 9, 1988. Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase I, Memorandum Opinion and Order, DA 88-157, released Feb. 8, 1988.

[12] At the time of the INTV and NAB extension requests, Hughes confirmed by letter its request to have its claim filing date established at 30 days after the order resolving its reconsideration request. Letter of George H. Shapiro, Esq., attorney for Hughes Television Network, to Jacqueline Spindler, Tariff Division, Jan. 22, 1988.

[13] NYT also refers to the Commission's Order In the Matter of Intercon- nection Arrangements Between and Among the Domestic and International Record Carriers, Memorandum Opinion and Order on Reconsideration, CC Docket Nos. 82-122 and 78-97, Phase II, FCC 87-161, 2 FCC Rcd 2999, 3006 (1987) for the proposition that equitable arguments, even though belatedly submitted, should be considered.

[14] We note also that the study, when it was completed, was submitted in NYT's annual access tariff filing, and not in this proceeding.

[15] NYT states that its video rates were about 4.5 percent lower during Phase I as a result of its overstated disallowance, but that during Phase II, when NECA's video rates reflected no PSV disallowance, no windfall dilution occurred. *Id.* at p. 6.

[16] INTV and NAB filed their claims on March 9, 1988. Pursuant to its original request, Hughes Television is granted 30 days from the release date of this Order to file its claim with the Enforcement Division of this Bureau.

[17] In NECA Transmittal No. 52, filed April 11, 1985, Attachment A, television investment figures are classified into categories including PSV cable investment. In New York Telephone Transmittal No. 755, filed March 12, 1986, NYT states: " . . . based on a total disallowance of 26,750,000 New York Telephone's allocated share is 6,016,386 (per Figure 1)."

[18] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Mimeo No. 4726, released May 24, 1985, at para. 8.

[19] NYT relies on the Commission's statement that it would consider modifying the disallowance figures "should any LECs hereafter justify the inclusion in their rate bases of disallowed PSV investment, either by quantifying this investment more specifically or demonstrating that the PSV cable pairs in question have been put to alternative use." *January 24 Order* at n.68. Given that NYT did not inform the Commission that it was undertaking a study or that it objected to the Commission's calculations, or petition for reconsideration in light of its proposed study, NYT's rationale is not persuasive.

[20] *I. e.*, NYT's acknowledged6 million share of the26.7 million total disallowance.

[21] We also reject NYT's argument that it could not at any earlier time have objected to the obligation to refund overpayments, as no refund was ordered prior to the *Refund Order*. As noted above, this proceeding was initiated with a suspension and investigation, and included an accounting Order and a disallowance Order. If NYT did not object to the suspension, the investigation, the accounting Order, or the disallowance of investment, it cannot now be heard to object to an Order that it pay the amounts it has previously acknowledged as its obligation. Such a course would be inequitable to the other parties in this proceeding.

Note: This document was previously included at 3 FCC Rcd 2638 with an incorrect release date of April 29, 1988.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Bell Atlantic Telephone Companies

Offer of Comparably Efficient Interconnection to Enhanced Service Providers

Pacific Bell and Nevada Bell

Plan for the Provision of Voice Mail Services

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 1988; Released: May 23, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On March 21, 1988, the Bell Atlantic Telephone Companies (Bell Atlantic) and Pacific Bell and Nevada Bell (Pacific) filed revisions to their Comparably Efficient Interconnection (CEI) plans[1] that the Commission conditionally approved in orders released on February 18, 1988.[2] The CEI Plan Orders required the carriers to make certain modifications to the Customer Proprietary Network Information (CPNI) and nondiscrimination reporting provisions of their CEI plans. The revisions that Bell Atlantic and Pacific filed incorporate CPNI and nondiscrimination reporting provisions included in amendments to their Open Network Architecture (ONA) plans.[3] In this Order, we approve the CEI revisions filed by Bell Atlantic and Pacific, subject to the conditions discussed below, on an interim basis pending any Commission action modifying CPNI and nondiscrimination reporting safeguards in the ONA review process.

II. COMPLIANCE ISSUES

A. *CPNI Requirements*

1. *Background*

2. In the *Phase II Reconsideration Order* in the Computer III proceeding,[4] adopted after Bell Atlantic and Pacific had filed their CEI plans, the Commission modified its CPNI rules in several respects. It required the BOCs to amend their ONA plans to define the type of information that they will treat as CPNI and to address potential ambiguities in their ONA plans regarding whether a particular item of CPNI should be attributed to an enhanced service provider or to a customer of the provider. It also adopted several requirements to increase a customer's ability to limit access to its CPNI. First, a BOC's CPNI notice to multiline business customers must include a response form that customers may use to inform the carrier of their preferred CPNI treatment. Second, the BOCs must honor a customer's choice to restrict release of its CPNI until the customer specifically chooses otherwise. Third, customers may restrict BOC access to some or all of their CPNI for specific time periods or for specific purposes. Fourth, the BOCs must honor customer requests for restricted treatment of CPNI that are sent before the carriers send notices of CPNI rights. Fifth, the BOCs must amend their ONA plans to include copies of their proposed CPNI notices and response forms.[5]

3. In the CEI Plan Orders, the Commission directed Bell Atlantic and Pacific to conform the CPNI sections of their CEI plans with these requirements. As noted above, both carriers filed revised CPNI sections to their CEI plans by incorporating CPNI amendments from their ONA plans. Specifically, both carriers addressed the Commission's modified CPNI requirements by filing the proposed notices and response forms to be sent to their customers informing them of their CPNI rights. In addition, on May 13, 1988, Bell Atlantic filed a revised CPNI notice and response form,[6] which it described as "relating to customer premises equipment and enhanced services."[7]

2. *Discussion*

4. We conclude that the revised CPNI provisions of Bell Atlantic and Pacific, and the revised CPNI notice and response form of Bell Atlantic, substantially address the CPNI directives in the CEI Plan Orders. The Commission is currently in the process of evaluating the ONA plan provisions that these carriers incorporated into their revised CEI plans and our findings in this order do not prejudge that evaluation. On an interim basis, pending Commission action in the ONA proceeding, we approve the CPNI section of the carriers' CEI plans, but require Pacific to further amend its CPNI notice as specified below. Pacific must file its amended CPNI notice with us on or before June 6, 1988. Pacific may send its CPNI notice to its multiline business customers seven days after filing the amendments we require herein unless we direct it otherwise.

a. *CPNI Notice*

1. *CPNI Definition*

5. Pacific defines CPNI in its annual notice as "name and address, telephone number, kind of service, number of lines, and other usage and billing data".[8]

6. In the customer premises equipment (CPE) context, we recently ruled that "if customers are to make an informed choice as to whether to restrict access to their CPNI, they need to know what it is".[9] The same standard logically applies to the enhanced services CPNI notice. Based on this standard, Pacific's CPNI definition is inadequate to inform customers about the nature of CPNI, and it should conform the CPNI definition in its notice with the *Further CPE Plans Order*.[10]

2. *Customer Right to Modify CPNI Decision*

7. Pacific's notice does not inform customers that they may restrict access to their CPNI at any time, and that this right is not dependent on the customer's return of the carrier response form within 30 days. Its proposed annual notice implies that a customer loses its right to restrict

access to its CPNI after 30 days, and that it retains no right to change a decision regarding access to CPNI over the course of a year.

8. Pacific must amend its proposed notice, as required in the *Phase II Reconsideration Order*, to inform customers that they may make or modify a decision regarding access to their CPNI at any time, consistent with the *Further CPE Plans Order*.[11]

b. *Administrative Fees for the Provision of CPNI*

9. In the ONA plan amendment used in its revised CEI plan, Bell Atlantic states that it may decide at some later time to charge an administrative fee for the provision of CPNI (both to its affiliate and to its competitors).[12] We will not consider this issue unless and until Bell Atlantic decides to charge an administrative fee. We require Bell Atlantic to notify us of any plans to impose such a charge prior to doing so.[13]

B. *Nondiscrimination Reporting*

1. *Background*

10. In the CEI Plan Orders, the Commission approved the formats of both carriers' reports on the timing of installation and maintenance. However, the Commission required the carriers either to revise the format of their quality reports (to include some indication of the relative frequency of trouble reports received from their enhanced services operations versus those of its competitors) or to make a showing, consistent with the terms of the *Phase II Reconsideration Order*, that they should not be subject to quality reporting because their procedures preclude quality discrimination.

11. Both carriers claim that they have made the requisite showing in their ONA amendments that their procedures preclude discrimination. Bell Atlantic cites its "standardized mechanized maintenance and installation procedures" that make "no distinction based on the identity of the customer requesting service",[14] and states that it will dispense with the filing of quality reports and will file timing of installation and repair reports with a modified format. Pacific states that its procedures are "highly integrated and mechanized to minimize manual intervention whenever possible", and that its procedures are based on a nondiscriminatory standard interval system.[15] Pacific requests expedited approval of the nondiscrimination section of its ONA plan amendment and, in the interim, approval to make modified filings that would include the affidavit on nondiscriminatory procedures described in the *Phase II Reconsideration Order*, proposed changes in provisioning procedures, and, at the least, the same quality reports that it proposed in the CEI plan.[16]

2. *Discussion*

12. We recognize that a full evaluation of the BOCs' nondiscrimination procedures is pending in the ONA proceeding.[17] However, the procedures that Bell Atlantic and Pacific describe in their CEI revisions provide substantial assurance that these carriers cannot discriminate in the CEI services described in their plans, particularly since those services, which are ordinary business lines and similar widely available business services, are already provided under well-established, highly standardized conditions.[18] Accordingly, on an interim basis, we do not require Bell Atlantic and Pacific to file quality reports for the CEI services described in the plans, pending Commission action on the nondiscrimination portions of their ONA amendments.[19] However, we will require the carriers to notify us before making any changes to the procedures described in their CEI revisions, and to file annual affidavits attesting that they have followed the nondiscrimination procedures described in their plans.

III. ORDERING CLAUSES

13. IT IS HEREBY ORDERED, that pursuant to Sections 1, 4(i) and (j), 201, 202, 203, 205, 218, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 201, 202, 203, 205, 218, and 405, and 5 U.S.C. § 553, and authority delegated pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, Bell Atlantic's and Pacific's CEI plans ARE APPROVED, subject to the conditions described herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Bell Atlantic Telephone Companies, Amendments to CEI Plan, filed March 21, 1988 (Bell Atlantic CEI Amendment); Pacific Bell and Nevada Bell, Amendments to their Comparably Efficient Interconnection Plan for the Provision of Voice Mail Services, filed March 21, 1988 (Pacific CEI Amendment). The Bell Atlantic CEI plan was for a message storage service. The Pacific CEI plan was for a voice mail service.

[2] The Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Enhanced Service Providers, *Memorandum Opinion and Order*, 3 FCC Rcd 1108 (1988); Pacific Bell and Nevada Bell, Plan for the Provision of Voice Mail Services, *Memorandum Opinion and Order*, 3 FCC Rcd 1095 (1988) (collectively, the CEI Plan Orders).

[3] The Bell Atlantic Telephone Companies, Amendment to Bell Atlantic Open Network Architecture Plan, CC Docket 88-2, Phase I (filed March 10, 1988) (Bell Atlantic ONA Plan Amendment); The Pacific Companies' Amendment to ONA Plan, CC Docket 88-2, Phase I (filed February 17, 1988) (Pacific ONA Plan Amendment).

[4] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), *Report and Order*, 104 FCC 2d 958 (1986) (*Phase I Order*), *modified on reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *aff'd on further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration Order*). *See also Report and Order*, 2 FCC Rcd 3072 (1987) (*Phase II Order*), *modified on reconsideration*, FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*).

[5] *Phase II Reconsideration Order*, 3 FCC Rcd 1150 at 1163-1164, paras. 104- 109.

[6] Bell Atlantic, Revised Customer Notification Letter, CC Docket No. 86- 79 (filed May 13, 1988).

[7] Bell Atlantic filed its revised CPNI notice and response form pursuant to the Further CPE Plans Order in CC Docket No. 86-79. See Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Tele-

phone Companies, CC Docket No. 86-79, DA 88-705 (released May 11, 1988). Because Bell Atlantic describes its revised CPNI notice and response form as applying to enhanced services, we evaluate those, rather than the sample notice and response form filed with its CEI amendments.

[8] Pacific CEI Plan at Exhibit II.

[9] Further CPE Plans Order, supra n. 7, at para. 18.

[10] Id. at para. 21, n. 44. We conclude that Bell Atlantic's definition of CPNI in its annual notice conforms with this standard.

[11] See id. at para. 21, nn. 49, 51. We conclude that Bell Atlantic's revised CPNI notice adequately informs customers of their right to modify their CPNI decision.

[12] Bell Atlantic ONA Plan Amendment at 91.

[13] We remind Bell Atlantic that the Commission has held that no fees may be charged for the provision of CPNI unless certain conditions are met, one of which is a showing that "compliance with the CPNI requirements would cause them [the BOCs] to incur substantial cost". Phase II Order, 2 FCC Rcd at 3098, para. 176.

[14] Bell Atlantic ONA Plan Amendment at Appendix B.

[15] Pacific ONA Plan Amendment at Appendix II.

[16] Pacific states that it cannot otherwise comply with the Commission's required format for its quality report because it does not track the use of its basic circuits. Pacific proposes, however, to commence feasibility study to see if it could provide such data. See Pacific CEI Amendment at 7.

[17] We make no findings in this order that could prejudge that evaluation.

[18] See, e.g., Bell Atlantic CEI Plan Order, 3 FCC Rcd at 1109, para. 16; Pacific CEI Plan Order, 3 FCC Rcd at 1097, paras. 25-26. Both carriers have also agreed to submit an annual affidavit, as required in the Phase II Reconsideration Order, attesting that they have followed the nondiscrimination procedures described in their ONA plans. See Bell Atlantic CEI Amendment at 6; Pacific CEI Amendment at 9.

[19] We also approve, on an interim basis, the format for installation and maintenance reports that Bell Atlantic proposes it its ONA amendments, which differs somewhat from that proposed in its original CEI plan.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-278

In re Applications of

THEODORE M. JONES — File No. 4768a-CL-P-256-A-86

For a construction permit to establish a new cellular system to operate on frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Charlottesville, Virginia Metropolitan Statistical Area (MSA)

CHARLES N. SMITH III — File No. 4264a-CL-P-277-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Sheboygan, Wisconsin MSA

PAULA M. ALOI — File No. 79231-CL-P-271-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Kokomo, Indiana MSA

EUNICE E. SINGLETON — File No. 78156-CL-P-278-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Columbia, Missouri MSA

JAMES C. DIAL — File No. 66719-CL-P-280-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Burlington, North Carolina, MSA

CEDRIC RIGGINS — File No. 86843-CL-P-295-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Midland, Texas MSA

ROBERT L. LAMBERT — File No. 78630-CL-P-252-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Pascagoula, Mississippi MSA

LUCILLE B. TOMPKINS — File No. 3866a-CL-P-248-A-86

For a construction permit to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Burlington, Vermont NECMA

In the Matter of
Revocation of Permit of

JAMES R. CROSBY — File No.76237-CL-P-276-A-86

Permittee of Station KNKA571 in the Domestic Public Cellular Radio Telecommunications Service in Grand Forks, North Dakota MSA

ORDER DESIGNATING APPLICATIONS FOR HEARING AND ORDER TO SHOW CAUSE

Adopted May 25, 1988; Released May 31, 1988

By the Deputy Chief, Common Carrier Bureau:

PRELIMINARY MATTERS

1. This proceeding involves cellular radio system applications filed during May 23-28, 1986, for Metropolitan Statistical Areas (MSAs) or markets 241-305. These markets include Charlottesville, Virginia; Sheboygan, Wisconsin; Kokomo, Indiana; Columbia, Missouri; Burlington, North Carolina; Midland, Texas; Pascagoula, Mississippi; Burlington, Vermont and Grand Forks, North Dakota. For the reasons set forth below these applications are designated for hearing.

2. Theodore M. Jones is the tentative selectee for the Charlottesville, Virginia MSA. A petition to deny this application was filed by Frank H. Mirgon (Mirgon) the fourth ranked applicant in the lottery for this MSA. Charles N. Smith III is the tentative selectee for the Sheboygan, Wisconsin MSA. Mirgon, who placed fifth in the lottery for Sheboygan filed a petition to deny the Smith application. The tentative selectee for the Kokomo, Indiana MSA is Paula M. Aloi. The second ranked applicant in the lottery, North American Cellular Partnership (North American), filed a petition to deny the Aloi application. Lucille B. Tompkins is the tentative selectee for the Burlington, Vermont New England County Metropolitan Area (NECMA). Diversified Cellular Limited Partnership, the third ranked applicant in this market, filed a petition to deny this application.[1] In the Columbia, Missouri, MSA, Eunice E. Singleton is the tentative selectee. Jean Siegal, who ranked third in the lottery, petitioned to deny this application. James C. Dial is the tentative selectee for the Burlington, North Carolina MSA. An informal objection was filed by R. Philip Harter, the second ranked applicant for this market.[2]

3. Cedric Riggins is the tentative selectee for the Midland, Texas MSA. On March 18, 1988 Jerry Shaefers, the fourth ranked applicant in the Midland, Texas lottery filed a Motion for Leave to File a Petition to Dismiss or Deny the Riggins application. Because the petition to deny was untimely filed we are treating it as an informal objection.

4. Robert L. Lambert is the tentative selectee for the Pascagoula, Mississippi MSA while the application of James R. Crosby for the Grand Forks, North Dakota MSA was granted in May 19, 1987. We have concluded that the allegations raised in the other petitions to deny are relevant to these markets also and therefore, on our own motion, incorporate them in this hearing designation order.

5. On January 25, 1988, Diversified Cellular Limited Partnership filed a Motion requesting that all the captioned markets be designated for a consolidated hearing because there are common issues concerning all the applications and applicants. The issues raised involve the same factual questions and some of the same individuals. *See* 47 CFR Section 1.227. A consolidated proceeding will best assure the proper dispatch of business by eliminating the need for adducing identical evidence in different hearings. Therefore, Diversified's motion is granted.

BACKGROUND

6. When the Commission adopted rules for the Cellular Radio Service it contemplated the selection of competing applicants using comparative hearing proceedings. *See Cellular Systems*, 86 FCC 2d 469 (1981); *recon.* 89 FCC 2d 58 (1982). Subsequently, the Commission decided to use random selection procedures in choosing among competing proposals. *See Cellular Systems / Random Selection*, 98 FCC 2d 175(1984); *recon.* FCC 85-117 released May 3, 1985, 58 Rad Reg 2d (P&F) 677 (1985). A lottery system was used for all markets starting with market number 31.

7. In the Lottery Order the Commission stated,

> recognized that under lottery selection procedures, some applicants may file mass-marketed, non-exclusive cellular applications to gain inexpensive entry into the lotteries for the below - 90 cellular markets. While such applications are not *per se* unacceptable, we caution prospective applicants that mere "lottery tickets" will not be accepted for filing. To be acceptable, a cellular application should clearly demonstrate the applicant's technical and financial qualifications and demonstrate why grant of a cellular license to this particular applicant would serve the public interest. If a significant and material issue exists regarding the sincerity of a tentative selectee's commitment or ability to provide high quality cellular service as a Commission licensee or if there are other reasons to question whether the public interest would be served by a grant, we have authority to designate the application for evidentiary hearing to resolve such issues.

98 FCC 2d at 213-214.

8. The Commission also adopted a rule prohibiting an applicant from having an ownership interest in more than one application in a market. However, interests of less than one percent were excluded from this prohibition. In so doing, it stated that the purpose of this rule was to protect the integrity of the lottery process by precluding an applicant from participating in more than one application for a cellular license. Also this limitation was intended to prevent schemes whereby an applicant may obtain a controlling or significant interest in more than one application in a market. The Commission also stated:

> Even with a one percent rule, however, it may be possible for a creative applicant, using various financing, voting or other arrangements, to enter into such schemes. Accordingly, we emphasize our intent to carefully scrutinize any application which appears to be directed toward skewing the lottery or giving an individual or group control, or the opportunity to obtain control, over more than one mutually exclusive application. We will not allow parties who attempt to circumvent our lottery procedures to obtain a cellular license . . . .

58 Rad. Reg. 2d (P&F) at 693 and n.68. *See* Section 22.921(b).

9. In its efforts to discourage the filing of frivolous applications by speculators having no real interest in constructing or operating a cellular system and in order to expedite the processing of applications, the Commission adopted a certification rule. Accordingly, each applicant in markets beyond the top 120 is required to certify under penalty of law, that its application is complete and contains all of the information required by Form 401 and our cellular application rules. *See* Section 22.913 of the Rules.

ARGUMENTS OF THE PARTIES

10. Petitioners uniformly maintain that in 20 markets between markets 241-305, an unusually large number of applications were filed. Alerted by this information, Mr. Leo Buk Lhu (Lhu) [3] began an investigation and discovered that more than 400 individual filed identical applications in each of the 20 markets. According to petitioners, all of these applications were prepared by Lewis Telecom, a company owned and controlled by Peter Lewis.[4] Neither Peter Lewis nor his company is designated as the contact

representative in any of these applications.[5] The applicants and permittee captioned above are among the individuals identified by Lhu.

11. Mr. Lhu and his associates attempted to contact the applicants to obtain further information,[6] and were directed to discuss all matters with Peter Lewis or employees or agents of Lewis Telecom. According to Lhu most of the persons contacted by him or his investigators were totally unaware of what cellular radio is or of the nature of their applications. They did not know they were applying for an FCC license to build a cellular radio system. Lhu states that most were unaware that the first-place lottery "prize" was something other than cash. According to petitioners, some of the applicants did not pay anything and others paid up to3.00 to Lewis to prepare each of their applications. It is alleged by petitioners that Lewis prepared these applications at a loss. Petitioners contend that few of these applicants are ready, willing or able to construct or operate cellular radio systems on their own.

12. According to the petitioners, the applicants declined to join any partial settlement group or "alliance".[7] This is significant, petitioners maintain, because Lewis is the founder and a major principal of Settlecom, Inc., (Settlecom) a settlement group administrator. They believe it is unlikely that Lewis would fail to encourage persons to whom he had sold applications in an arms-length transaction to join Settlecom. They also believe it is unlikely that every single one of these applicants would have made an independent decision not to join a settlement group.

13. In addition, petitioners contend that when any of the more than 400 persons won a lottery, the format of the post-lottery Section 1.65 amendments each submitted was identical. The amendments appear to have been typed on the same word processor, petitioners maintain. All of the more than 400 applications had an "x" marked over the contact representative item (4) in form 401. Petitioners also assert that the applications were similar in that they had two microfiche sheets in each jacket -- one for the cover page through Exhibit 1 (applicant unique portion) and another for Exhibit 2 through the end (generic portion). Also all the applicants failed to indicate their name in the space provided for this in Form 401, Schedule B, page 3, because this page could not otherwise be generically microfiched. Whenever any of these applicants won a lottery, petitioners allege that this intentional omission is characterized as an inadvertent "typographical" error and corrected by a Section 1.65 amendment.

14. According to petitioners, Lewis is the real party in interest behind these applications and has skewed the lottery process in his favor. For example, in Charlottesville, if Lewis had 414 chances to win out of 1,076 applicants, then he had a 38.5% chance of being selected, compared to the 0.09% chance enjoyed by other applicants.

RESPONSES

15. Applicants allege that the petitions should be rejected because they do not comply with Section 309(d)(1) of the Act in that they do not contain an affidavit from a person with personal knowledge of any undisclosed ownership interests in the applications. Thus, the applicants state, the petitioners representations should be given no weight. Allegations were also raised in the responses concerning the propriety of Mr. Lhu selling his information to petitioners in various markets.

16. Applicants uniformly maintain they are the sole, 100% owners of the applications. Each applicant maintains that he or she purchased a package of 20 applications (one application for each of 20 markets) from Lewis at a total cost of60. Simultaneously they retained the services of Lewis to be their consultant if they were selected first in a lottery. Applicants state they were fully aware they were filing for cellular authorizations.

17. Applicants also represent that only they will be in a position to control the operation of the facilities. Applicants indicate that they used the services of Lewis Telecom to assist them in their efforts to obtain a construction permit. Such a standard business relationship does not give Lewis the right to control the operation of the facilities, applicants assert.

18. Moreover, the applicants maintain they have firm financial commitments in their own names. The applicants also represent that they paid the commitment fees. Applicants state they are ready, willing and able to be FCC permittees and licensees.

19. According to the applicants, the declarations submitted with the petitions are based on hearsay, which is not admissible in court of law and should be given no credence here. Furthermore, applicants assert that the affidavits attached to the petitions to deny are forged. Affidavits from Sonja L. Parson, Ronny E. Jones and Phillippa Mezile were attached to Kevin Bass' Declaration. Applicants submitted expert handwriting analysis from Gloria Weiss and James T. Miller concluding that these affidavits were forgeries.[8] Applicants submitted statements from the persons allegedly contacted by petitioners which contradict the information contained in the declarations submitted with the petitions.

20. In his statement (attached to the applicants' responses to the petitions to deny) Lewis asserts that Lewis Telecom, Inc., under his direction, prepared the applications.[9] In his comments Lewis states that as part of his business plan some 430 applications prepared by his firm were filed in 20 markets. His business plan contemplated a competitively low price for a twenty-market application package to be purchased by 500 individuals. Planned shortfalls from initial investment in application preparation were expected to be recovered through profits received for providing consulting services to lottery winners. Lewis' plan would maximize the chance that one of his clients would win the lottery in each of the markets, and would create a favorable environment for Lewis to be selected to provide consulting services to lottery winners. The 20 market limit was imposed to limit the amount of custom engineering required, and minimize the overall costs associated with the preparation of the applications. For the same reason, it was determined to design applications only for individual applicants (corporate clients would require an individualized Schedule A in Form 401). The actual costs to Lewis was14 per application (the actual price charged was 3/application). Lewis planned to charge a5,000 retainer and100 per hour for consulting services. If 4 to 5 clients retained Lewis for consulting services Lewis projected a net profit before taxes of330,500.

21. In early 1986, Lewis launched an advertising campaign (concentrated in the Washington, D. C. area) to promote his cellular telephone consulting company. Lewis promoted his services primarily in Washington, D. C., Maryland and Northern Virginia because he believed that limiting his initial efforts to his home-base geographic area

would be most cost effective. Lewis maintains that no marketing representative engaged in blind solicitations to the public; the representatives acted only in response to inquiries or specific referrals or on the basis of business contacts. Lewis maintains that all marketing representatives were instructed (1) to determine that the individual was qualified to be an applicant according to the Commission's rules; (2) to brief the client on the nature of cellular service and FCC procedures regarding licensing of cellular systems (3) to ensure that the client personally reviewed the twenty-application set; (4) to obtain all necessary signatures on FCC Forms 401 and MSA certificates; (5) to secure an oral indication from the client that if he or she won the lottery, Lewis would be retained for post- lottery consulting services; and (6) to obtain the client's payment of60 for the twenty market application package. Lewis states that in every case clients were provided with a set of twenty generic applications for review prior to signing the FCC Form 401 and certifications. Lewis states that it did not fill out the contact representative item on Schedule A, because it was not preparing an exclusive application for someone specific and also to avoid mail and phone solicitations.

22. Applications were filed in: Olympia, Washington 242; Kenosha, Wisconsin 244; Lafayette, Indiana 247; Burlington, Vermont 248; Bloomington-Normal, Illinois 250; Pascagoula, Mississippi 252; Odessa, Texas 255; Charlottesville, Virginia 256; Hagerstown, Maryland 257; Danville, Virginia 262; Fort Walton Beach, Florida 265; Kokomo, Indiana 271; Kankakee, Illinois 273; Grand Forks, North Dakota/Minnesota 276; Sheboygan, Wisconsin 277; Columbia, Missouri 278; Burlington, North Carolina 280; Rochester, Minnesota 288; Midland, Texas 295; and Aurora-Elgin, Illinois 303. Nine Lewis clients (who are the captioned applicants in this proceeding) became tentative selectees. According to Lewis, consulting agreements were reached with each of the nine lottery winners.

23. Lewis maintains that the first post-lottery service to be performed for the tentative selectees was the preparation of a Section 1.65 amendment. He also prepared financial amendments. In every case, the financial commitment was made by the equipment vendor to the tentative selectee and the fee was paid by the tentative selectee, Lewis asserts. Lewis acted only as the initial intermediary for contact purposes; no financing was, or will be, provided by Lewis.

24. Lewis states that he has no intention of controlling the operation or management of the systems in any of the twenty MSAs where applications were prepared by Lewis' company. Lewis also states that he has no desire for his company to participate in the ownership of any cellular system in the twenty markets. Lewis Telecom's status as a consultant may be terminated at any time. Lewis maintains that his settlement firm (Settlecom) did not accept Lewis' clients to avoid allegations regarding the real party-in-interest issues and based on the belief that this would violate securities laws.

25. A response to Lewis' November 6, 1987, comments was filed by North American Cellular Partners, the petitioner in Kokomo, Indiana. North American alleges that previous sworn statements by the applicants concerning the limited post-lottery role to be played by Lewis are now belied by the comprehensive set of services Lewis is providing under the consulting agreement. Moreover, it claims that Lewis' repeated assertions that selectees whose applications Lewis prepared were under no obligation to keep him involved are demonstrated to be absolutely false by Lewis' own internal operating procedures manual and the company's checklist of procedures to be followed by its marketing representatives. The internal procedures required the marketing representatives to secure a verbal commitment from the applicants to use Lewis as a consultant. According to North American, what emerges is a *prima facie* case of concealment, misrepresentation and *de facto* control. North American contends that Lewis wants the Commission to believe that the applicants were not committed to use his consulting services. In addition, North American notes that in all the oppositions to the petitions to deny the applicants stated that they retained Lewis' services as a cellular consultant at the time they signed their applications. This conflicts with Lewis' characterization of his marketing strategy which was to create a favorable environment for him to be selected as a consultant to lottery winners. Moreover, North American maintains that the applicants have declared under penalty of perjury that they understood they had entered into a long-term agreement with Lewis at the time they signed the applications. Thus, according to North American, Lewis cannot now attempt to portray his application preparation process as merely fostering Lewis' "hope" that its winning applicants "would retain [Lewis] for the significant support and consulting services which would then be needed." It contends that Lewis' characterization of its oral agreement with the applicants as a non-binding obligation is a flagrant misrepresentation of the facts.

26. In addition, North American asserts that Lewis has deliberately concealed the details of his post-lottery financial dealings with the applicants. There is a question of fact, according to North American, as to how deeply indebted to Lewis the applicants are for the post-lottery consulting services that have been provided. If they have run up a huge bill, Lewis is in a position to exercise dominion and control due to the indebtedness, North American maintains. North American states that Lewis is intimately involved in every aspect of the decision-making process. The range of services which are covered by the consulting agreement are all-encompassing. As evidence of the all encompassing nature of the services provided, North American points out that each applicant is represented by the same attorney, Robert Kelly, who has an office at the Lewis address and appears to be a Lewis employee.[10] North American adds that the consulting agreement raises a substantial question of fact as to whether Lewis is in a position to control the operation of the applicant's facility, and thus, whether Lewis is the real party in interest in the applications.

27. North American also asserts that the financial dealings between the parties raise serious questions concerning the *de facto* control of the applicant. According to North American, the balance sheet Aloi filed with the Commission showed liquid assets of15,257 and a net worth of 43,157. However, North American asserts, at this preliminary stage of the cellular process, Aloi already is indebted to Lewis in an amount which exceeds her liquid assets by a factor of two, and which represents nearly three-fourths of her net worth (30,200). In view of the extent of the obligation in relation to Aloi's limited resources, North American alleges that Lewis is in a position to exercise considerable influence over Aloi and/or to demand equity participation from her as an alternative to cash payment claims North American.

28. Lewis filed a reply to North American's response, maintaining that it contained new, unsubstantiated and speculative attacks on Lewis. In addition, Lewis states that prior to the lottery he did not have any enforceable contract rights with the applicants for post lottery consulting services. North American's assertions are essentially a legal conclusion as to whether a contract existed, claims Lewis. Under the terms of the agreements with all of the selectees, Lewis' billing for services does not commence until such time as the selectees receive a construction permit from the FCC.[11] At the time the selectee receives the construction permit the time accumulated by Lewis plus any out-of-pocket disbursements will be billed.[12]

DISCUSSION

29. Section 309(d)(1) of the Communications Act provides that parties in interest may file petitions to deny applications. It further provides that petitions shall contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest. Such allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof. *See* 47 U. S. C. Section 309 (d)(1). Thus, petitions must set forth specific factual allegations, not general, conclusory assertions. *California Public Broadcasting Forum v. FCC*, 752 F.2d 670 (1985); *Stone v. FCC*, 466 F.2d 316 (1972) (the allegation of ultimate, conclusionary facts or more general allegations on information and belief, supported by general affidavits are not sufficient).

30. We conclude the petitions to deny comply with Section 309(d). The declarations submitted with the petitions comply with the procedural requirements of the rules. *See* 47 C.F.R. Section 1.16. Petitioners have made substantial, material, and specific factual allegations that require resolution in an evidentiary proceeding. *Citizens for Jazz on WRUR, Inc. v. FCC*, 775 F.2d 392 (1985) *See also, Citizens Committee to Save WEFM v FCC*, 506 F.2d 246, 266 (D.C. Cir. 1974); *Citizen Committee to Preserve Voice of Arts in Atlanta* ; 436 F.2d 263 (D.C. Cir. 1970). Moreover, the unresolved questions of fact are material to the findings of what is in the public interest. *Mobilfone of Northeastern Pennsylvania Inc. v FCC*, 682 F.2d 269 (1982).

31. It is undisputed that Lewis spent a considerable amount of money in the preparation, marketing and filing of approximately 8,600 applications in twenty markets. The selling price of3 each left him with a loss which he estimates at approximately90,000. Lewis contends that he sustained that loss in the hope that several of his customers would win a lottery and retain Lewis as a consultant. However, a hearing is necessary to determine whether Lewis had control over these applicants or an ownership interest in their applications.

32. It appears that Lewis' instructions to his salespersons required them to obtain a verbal agreement at the time of sale that the purchaser would employ Lewis as a consultant if the purchaser were to win a lottery. In fact, all Lewis' customers who won a lottery did enter into a consulting agreement with Lewis. Whether this arrangement gave Lewis an ownership interest in the applications he sold will be determined in this proceeding. If Lewis had an ownership interest in each of the applications he sold, those applications would be defective under Section 22.921(b), which limits individuals to an ownership interest in only one application per market. Therefore, we will designate an issue inquiring into the nature of the understanding between Lewis and his customers, including the captioned applicants and permittee.

33. The hearing will also inquire into whether the applicants and permittee were the real parties in interest behind their applications. In this regard, we note that not one of the over 400 applicants who obtained their applications from Lewis joined a settlement group. Applicants were, of course, free to decline to enter into such groups. However, the fact that all of Lewis' customers declined these offers raises questions as to whether they were acting independently and were in control of their applications. Events subsequent to the lottery raise the same questions. In addition to their all agreeing to employ Lewis as a consultant all the applicants utilized the same counsel (whose address is the same as Lewis') and filed virtually identical Section 1.65 amendments.

34. We are also concerned that there may have been an effort to deceive the Commission by withholding any indication of a connection between Lewis and the applicants and a misrepresentation issue will, therefore, be specified. First, none of the applications listed Lewis as a contact representative, although there is a space provided for that information in the application. Second, although the Section 1.65 amendments filed by each of the applicants were prepared by Lewis, those amendments were submitted without any indication of Lewis' involvement. Finally, each of the Section 1.65 amendments stated that the applicant's name had "inadvertently" been omitted from page 3 of Schedule B of the Form 401. However, it appears that a generic Schedule B was used which systematically did not include the applicant's name.

35. Moreover, Lewis' own operating procedures indicate that the applicants signed certifications and Forms 401 after allegedly having seen a "generic package" of applications. If the applicants only saw an application package and not their own completed applications it is possible that the certification may have been false and, therefore, not in compliance with Section 22.913 of the rules. Therefore, an appropriate issue will be specified.

36. For the reasons set forth above, we will specify real party in interest, multiple application and misrepresentation issues as well as an issue inquiring into whether the applicants complied with Section 22.913 of the rules, when they signed the certifications in their applications. These issues will allow full inquiry into the ownership and control of the applicants and whether they have been candid with the Commission.[13]

Other Issues:

Columbia, Missouri:

37. Jean Siegal (Siegal) in a petition to deny Eunice Singleton's (Singleton) application in Columbia, Missouri, alleges the tentative selectee is not financially qualified since her current assets are not sufficient to cover the3,000 commitment fee and2,000 to extend the commitment for three month terms. In addition, Siegal maintains Singleton's estimated costs of operation are unrealistically low.

38. In her response Singleton submits proof that she has paid the commitment fee which, she alleges, demonstrates a firm financial commitment. In addition, Singleton maintains that Siegel offered no demonstration that the estimated costs are unreasonable on their face.

39. Section 22.917(b)(1) requires that applicants demonstrate a firm financial commitment to construct and operate for one year, including the realistic and prudent estimated costs of construction and other initial expenses and operating expenses for one year. We agree with Singleton that the estimated costs of construction appear reasonable, and Siegel has failed to raise any serious questions concerning these costs. *Advanced Mobile Phone Service, Inc. (Illinois)* 91 FCC 2d 512, 518 (1982); *Ameritel, Inc.*, DA 87-304, released March 26, 1987; *Advanced Mobile Phone Service, Inc. (New York)*, 53 Rad. Reg. 2 (P&F) 349 (1983). Therefore, no substantial question of fact remains about the cost allegations in the petition.

Kokomo, Indiana:

40. Petitioner in this MSA alleges that the application violates Section 22.913(c) of the rules because the microfiche copies of the application do not have the market name and number on the label.

41. In response to the petition the applicant maintains that the application does contain two complete microfiche copies of the application, as required by Section 22.913(c). All the information contained in the application may be found in the microfiche. If any information is missing, it is the result of an inadvertent minor error, according to the applicant. The applicant submitted an amended set of microfiche copies to supplement the two copies on file out of an abundance of caution. In addition, the applicant maintains that the cases cited by petitioner are inapposite.

42. We conclude that the microfiche copies contained in the application complied with Section 22.913(c). Although the label did not contain the market number, this mistake is minor and can be cured by amendment. The microfiche as filed provided sufficient information to make identification of the application and the market number possible, albeit on separate cards. We agree with the applicant that the cases cited by petitioner are in fact inapposite. *See Jennings B. Kelly and Edward L. Vinson*, Mimeo No. 4262, released May 5, 1986 (microfiche copies in application were not for applicant). *Werner, Burton K*, 2 FCC Rcd 1484 (1987) (unclear page in microfiche is permissible mistake).[14] Section 22.918(b) of the rules provides that a tentative selectee may file minor amendments. Thus, we conclude that no substantial question of fact remains concerning this issue.

Burlington, Vermont:

43. Diversified Cellular Limited Partnership (Diversified) argues that Lucille B. Tompkins (Tompkins) application should be dismissed because she has failed to demonstrate her financial qualifications to construct and operate the Burlington system. First, Diversified alleges that the applicant has failed to submit the firm financial commitment required by the rules because the commitment letter submitted with the financial amendment contains a condition, satisfaction of which has not been shown.[15] Given this unsatisfied condition, the letter simply cannot be considered the binding financial commitment the Commission requires, Diversified alleges.[16] The applicant's financial showing is also defective, according to Diversified, because Tompkins has failed to submit documentation proving that its proposed lender--Telephone and Data Systems, Inc. (TDS)--which is not a recognized financial institution-- has the funds available to meet its commitment to the applicant. According to Diversified, this failure is shown by the following three deficiencies: (1) the commitment letter from the Australia and New Zealand Banking Group (ANZ), proposing to lend TDS three million dollars fails to contain the necessary binding words of commitment; (2) the letter contains various unsatisfied and undisclosed conditions and covenants; (3) the letter, by its terms, does not allow the re-loaning of the proceeds from TDS to the applicant. Moreover, Diversified alleges that TDS's balance sheet is out of date by more than year and does not meet the Commission's "net liquid asset test" or the "net worth" test. Finally, applicant has not shown that the funds it proposes to obtain from TDS have not been committed by that entity to another cellular project, Diversified maintains.

44. Bruce M. Schorsten (Schorsten), whose application in this market was dismissed, has filed an application for review of that decision, and filed a petition to deny Tompkins' application. Schorsten states that a detailed outline of the terms and conditions of the documents to be executed in the TDS financial proposal should be submitted to the Commission, in order to determine whether the documents will comply with Commission rules. In addition, according to Schorsten, TDS has not stated that the funds it has offered Tompkins are not committed to any other project, nor has TDS demonstrated the availability of these funds.

45. In her response, Tompkins asserts she is financially qualified because the entity providing the firm financial commitment has more than sufficient assets to meet its commitment. According to Tompkins, the condition which requires her to hire USCC to manage the proposed system does not come into effect until money is borrowed and therefore, is not a condition precedent that must be satisfied at this time. Tompkins maintains that the ANZ letter meets the Commission's financial commitment tests. She asserts that the terms not specified in the letter are terms "typical for a credit facility of this kind." Conditions requiring an applicant to execute a "standard" financing agreement and "standard" guarantees are merely perfunctory and do not make a financial commitment any less firm, Tompkins argues. TDS has committed the funds to the applicant, who will construct the system, Tompkins maintains. The 1986 financial statement is the most recent statement available to TDS, according to Tompkins. Moreover, Tompkins maintains that under the net liquid assets test, TDS is financially qualified to make the commitment. The ratio of assets to commitment is 26 to 1, a ratio which is clearly sufficient to demonstrate Tompkins' financial qualifications. Finally, Tompkins asserts that TDS has sufficient funds allocated specifically for the construction and operation of the system. In addition, Tompkins requests sanctions against Schorsten alleging that his petition to deny is a strike pleading, filed purely for dilatory purposes.

46. Tompkins' application indicates construction and first year operational expenses of2,896,743. To finance these costs, the applicant has submitted a letter from TDS agreeing to lend3,000,000; a letter from ANZ Bank addressed to TDS stating ANZ's willingness to lend TDS 3,000,000 for construction and operation of the Burlington, Vermont system; and copies of audited financial statements of TDS dated December 31, 1986. The letters submitted to substantiate the financial showing meet the firm financial commitment test. The TDS letter identifies the applicant and is market specific and both letters contain sufficient terms of the proposed loans. Moreover, we find that the terms not specified in the ANZ letter do not make the financial commitment any less firm. *See EDM Cellular*, 3 FCC Rcd 330 (1988). Any loan agreement

contemplates that certain documents will be executed and that the loan will require certain guarantees on repayment. *Gary Zipper*, 2 FCC Rcd 1246 (1987).

47. Section 22.917 of the Commission rules requires applicants obtaining financing from an entity other than a recognized lending institution to submit proof that the financing institution has the funds available and uncommitted to another cellular application. In this case TDS has submitted such proof. It submitted its most current available balance sheet. This balance sheet demonstrates sufficient assets to fund a3 million financial commitment. Its total assets as of December 31, 1986 were approximately437,949,519. *EDM, supra* ; *Robert L. Kile*, DA 87-72, released January 28, 1987; *American Cellular Corp.*, 103 FCC 2d 26, 30-31 (1986). We also find that TDS has sufficient funds allocated for the Burlington system.[17]

48. However, the condition requiring Tompkins to retain United States Cellular Corporation to manage the system is not a perfunctory condition. Tompkins alleges that the condition does not need to be satisfied at this time but she has not satisfactorily indicated whether she will meet this condition and therefore, we cannot determine whether the loan will be available. Accordingly, an appropriate financial issue will be specified.[18]

ORDER TO SHOW CAUSE

49. James R. Crosby, the tentative selectee in Grand Forks, North Dakota obtained his application from Lewis Telecom. This application was inadvertently granted. The issues designated for hearing are applicable to this permittee.

50. Section 312(a) of the Communications Act states that the Commission may revoke any station license or construction permit because of conditions coming to the attention of the Commission which would warrant refusing to grant a license or permit on an original application. 47 U.S.C. Section 312 (a)(2).

51. Before revoking a license or permit pursuant to Section 312(a)(2) the Commission must serve upon the licensee an order to show cause why an order of revocation shall not be issued.

52. Accordingly, IT IS ORDERED, that James R. Crosby SHOW CAUSE why its license for station KNKA-571 SHOULD NOT BE REVOKED.[19]

53. The matters concerning this ORDER TO SHOW CAUSE will be resolved pursuant to the issues specified below.

ORDERING CLAUSES

54. Accordingly, IS IS ORDERED, that the captioned applications ARE DESIGNATED FOR A CONSOLIDATED HEARING pursuant to Section 309(e) of the Communications Act of 1934, upon the following issues:

(1) To determine all the facts and circumstances surrounding the preparation and filing of the captioned applications and amendments.

(2) To determine the facts and circumstances surrounding any relationships, agreements or understandings, express or implied, between Peter Lewis and the applicants.

(3) Based on the evidence adduced above whether:

(a) the applicants and permittee are the real parties in interest behind their applications.

(b) the applicants and permittee complied with the Section 22.921(b).

(c) the applicants and permittee have misrepresented material facts to the Commission or have lacked candor.

(4) To determine the facts and circumstances surrounding the signing of the certification by each applicant.

(5) Based on the evidence adduced under issue (4) whether the applicants complied with Section 22.913 of the Rules.

(6) To determine whether Lucille B. Tompkins will comply with the condition of her loan commitment requiring her to utilize a particular management company.

(7) Based on the evidence adduced under issue (6) whether Lucille B. Tompkins is financially qualified.

(8) Based on all the above whether a grant of the pending applications would be in the public interest, convenience and necessity.

(9) Based on all of the above whether James R. Crosby's construction permit should be revoked.

55. IT IS FURTHER ORDERED, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

56. IT IS FURTHER ORDERED, Pursuant to Section 309(e) of the Communications Act, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the applicants. We are assigning the burdens of going forward with the evidence and proof on the applicants because they have particular knowledge of the specific events at issue in this proceeding.

57. IT IS FURTHER ORDERED, that the applicants selected 2nd, 3rd and 4th in various markets: Stephen M. Schmidt, Maben Herring, Clarence Ramsey, Agnes Allgire, Lowell V. Waddell, Daniel O'Connell, Ronald W. Hawkins, Willie T. Robertson, Agnes Poindexter, Michael Newson and Clyde E. Howard III, (*See* Appendix A) are made parties to this proceeding and the findings of fact and conclusions of law will be *res judicata* concerning these applications.

58. IT IS FURTHER ORDERED, that petitioners, Peter Lewis and Lewis Telecom and the Common Carrier Bureau are made parties to this proceeding.

59. IT IS FURTHER ORDERED, That the petitions filed against these applications ARE GRANTED IN PART to the extent indicated in this Order, AND DENIED in all other respects.

60. IT IS FURTHER ORDERED, that James R. Crosby SHOW CAUSE why his permit for station KNKA-571 SHOULD NOT BE REVOKED. Pursuant to Section 312(d) of the Act the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Commission.

61. IT IS FURTHER ORDERED, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 1.221 of the Rules within 20 days of the release date hereof, a

written notice stating an intention to appear on that date for a hearing and present evidence on the issues specified in this Order. Because of the complexity and the nature of the issues, the multi-party nature of the proceeding, (including the fact that parties have been added who were not lottery winners but the 2nd, 3rd or 4th ranked applicants in the markets) the expedited hearing procedures set forth in Section 1.822 are not conducive to the resolution of the issues in this proceeding. Furthermore, the written case procedures set forth in Section 1.822 are not appropriate when the credibility and demeanor of witnesses is apt to be critical to resolution of the issues. Therefore, section 1.822 will not be followed in this proceeding and the hearing shall be conducted pursuant to Sections 1.201, *et seq*.

62. This Order is issued under Section 0.291 of the Commission's rules and is effective on its release date. *See* 47 C.F.R. Section 1.4 (b)(2).

63. The Secretary shall cause a summary of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Vaughan
Deputy Chief, Common Carrier Bureau

APPENDIX A

The following second, third and fourth ranked applicants are made parties to this proceeding: Stephen M. Schmidt, File No. 65839-CL-P- 256-A-86 (2nd ranked) and Maben D. Herring, File No. 78851-CL-P-256-A-86 (3rd ranked) for the Charlottesville, VA. MSA; Clarence D. Ramsey, File No. 70017-CL-P-276-A-86 (2nd ranked) and Agnes A. Allgire, File No. 75638- CL-P-276-A-86 (3rd ranked) for the Grand Forks, ND MSA; Lowell V. Waddell, Jr. File No. 65835-CL-P-277-A-86 (2nd ranked) Daniel W. O'Connell, File No. 78061-CL-P-277-A-86 (3rd ranked) and Ronald W. Hawkins, File No. 76212-CL-P-277-A-86 (4th ranked) for the Sheboygan, Wisconsin MSA; Willie T. Robertson, File No. 85305-CL-P-278-A-86 (2nd ranked) for the Columbia, Missouri MSA; Agnes M. Poindexter, File No. 79381-CL-P-295-A-86 (2nd ranked) and Michael deH. Newsom, File No. 68145-CL-P-295-A-86 (3rd ranked) for the Midland, Texas MSA. Clyde E. Howard, III, File No. 75767-CL-P- 248-A-8,(2nd ranked) for the Burlington, Vermont NECMA.

FOOTNOTES

[1] The lottery for the nonwireline applicants in this market was held on November 21, 1986, Bruce M. Schorsten was selected first. Mr. Schorsten's application was subsequently dismissed by the Bureau. *See* , *Bruce M. Schorsten*, 2 FCC Rcd 5421 (1987). Mrs. Tompkins was then named the first ranked applicant.

[2] The Mobile Services Division requested the applicant to file a response by Order released August 27, 1987, DA 87-1177. Dial complied with the Order and filed a response. In addition, Dial has filed an Application for Review of this Order, which will be entertained at a later date.

[3] Lhu is an applicant for cellular applications in markets 121-305. He worked as an agent of Mobile Telephone Corporation (MTC) a company that administers cellular radio applicant settlement groups and prepares applications. His Declaration was attached to petitions to deny filed in five markets which are the subject of this designation order.

[4] Petitioners alleged that 414 Lewis prepared applications were filed in each of these markets. Subsequently, Lewis acknowledged that 430 applications that he prepared were filed in each of the 20 markets.

[5] We will refer to Lewis and Lewis Telecom collectively as Lewis.

[6] Declarations were also submitted from Kevin E. Bass and James McLaughlin. Attached to Bass' Declaration were affidavits from Sonja Parson, Ronny E. Jones and Phillippa Mezile.

[7] A partial settlement group or an alliance is an agreement among fewer than all the applicants in a given market that provides, *inter alia*, that if any member of the group wins the lottery it will retain 50.1% of the ownership of its application and divide the remaining 49.9% among the other members of the group. Each of the remaining members would receive less than 1% interest provided there are more than 50 members in the group. In the event there are fewer than 50 members in the group the winning applicant retains a large enough share so that when the remainder is divided among the other members of the group each is less than 1%.

[8] Petitioners no longer rely on Bass' declaration nor the affidavits that were attached.

[9] Lewis also filed a Petition for Leave to Intervene and for Leave to File Comments on November 6, 1987. North American opposed the petition alleging it is late, did not present any newly discovered evidence and, therefore, should be summarily dismissed. With his motion Lewis also filed comments. North American responded to these comments and Lewis filed a reply to North American's response. Lewis requests permission to intervene as a party in these proceedings alleging that the passage of time and intervening circumstances suggest the desirability of Lewis' individual and direct participation in the Commission's deliberations. Lewis alleges his direct participation could obviate the necessity of a hearing since the Commission would have full knowledge of the facts. For good cause shown we are granting Lewis' Petition for Leave to Intervene and denying North American's Opposition. We are designating Lewis and Lewis Telecom as parties to this proceeding.

[10] According to North American, Kelly's telephone number is answered "Lewis Telecom".

[11] Lewis maintains that the attorney chosen by the selectees is an independent attorney who shares office space with Lewis. The selectees are responsible to the attorney for the payment of his services, Lewis alleges.

[12] Peter Lewis filed a Petition for Leave to File and a Contingent Motion for Special Relief on March 18, 1988. Various opposition pleadings were filed. Lewis' request that issues be specified against the petitioners for alleged abuses in their investigations and for allegedly abusing the Commission's processes is denied. Petitioners' applications are not being considered in this proceeding and, therefore, Lewis' request that issues be specified against the petitioners is not appropriate. The cases relied upon by Lewis are distinguishable,[*Chronicle Broadcasting Co.*, 19 FCC 2d 240,244-45 (1969); *McClatchy Newspapers*, 42 Rad. Reg. 2d (P&F) 637, 640 (1978); *Rocket Radio, Inc.*, 56 FCC 2d 238 (1978); *James C. Sliger*, 70 FCC 2d 1566 (1979)]. In those cases the petitioners' applications were pending in the proceeding. Here, the petitioners' applications may never advance to the point of

being considered for grant. Furthermore, Lewis' Motion to Strike the response to Contingent Motion for Special Relief filed by Diversified is denied.

[13] In order to avoid duplicative proceedings if the winning applicants are disqualified and other individuals whose applications appear to have been prepared by Lewis succeed to the top spot, we are making additional applicants listed in Appendix A *infra*, parties to this proceeding. The application of Terry L. Holloman for the Bloomington- Normal, Illinois MSA was returned as defective by the Mobile Services Division. *See* Letter to Holloman dated January 29, 1987; *recon. denied*, DA 88-308, released April 8, 1988, application for review pending. The findings of fact in this proceeding would be binding on this applicant if his application for review is granted.

[14] The letter perfect standard applies only to certain threshold filing requirements and does not apply to post lottery review. *See Johnstown Cellular Communications*, DA 86-322, released December 16, 1986.

[15] The TDS letter has the following condition: "While any amounts are outstanding under this credit facility, the borrower shall have retained United States Cellular Corporation to manage the nonwireline cellular telephone system in the Burlington, Vermont, NECMA, on such terms and condtions as the parties shall agree and subject to the Borrower's direction and control."

[16] To the extent that the supplier of funds is directing who will be the manager of the system, a question of whether the financial arrangements contemplate an unauthorized transfer of control is raised, Diversified alleges.

[17] We disagree with Tompkins that Schorsten's petition is a strike petition and we therefore, deny the request for sanctions.

[18] Management of a cellular facility by the entity providing the financing is permissible. *James K. Larrington Corp.*, 2 FCC Rcd 1529 (1987).

[19] Because the alleged actions which are the subject of this proceeding are wilful as defined in Section 312 (f) of the Communications Act, the notice requirement of Section 558 of the Administrative Procedure Act does not apply. *See* 5 U.S.C. Section 558(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-277

In re Applications of

Albert L. Dorsey, Jr. (hereafter Dorsey)	File No. BPH-861010SY
Charles M. Edwards et al., d/b/a Alpha FM Partnership (hereafter Alpha)	File No. BPH-861014SZ
Pamela R. Jones (hereafter Jones)	File No. BPH-861014TA
Winfas of Nags Head, Inc. (hereafter Nags Head)	File No. BPH-861014TB
Nags Head Radiophone Company, Inc. (hereafter Radiophone)	File No. BPH-861014TD
Coastal Broadcasting Company, Inc. (hereafter Coastal)	File No. BPH-861014TE
Surfside Broadcasting (A Limited Partnership) (hereafter Surfside)	File No. BPH-861014TF

For Construction Permit for a
New FM Station on Channel 222A in
Nags Head, North Carolina

HEARING DESIGNATION ORDER

Adopted: May 23, 1988 **Released: June 6, 1988**

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Applicants for new broadcast stations are required by Section 73.3580 of the Commission's Rules to give local notice of the filing of their applications. The applicant below has published the required notice, but the notice is deficient. To remedy this deficiency, the applicant must republish an amended local notice of the application, if it has not already done so, and so inform the presiding Administrative Law Judge within 30 days of the release of this Order, or an appropriate issue will be specified by the Judge.

APPLICANT	DEFICIENCY
Dorsey	Public notice shows application is available for public inspection in Kill Devil Hills, not Nags Head.

3. *Alpha.* In response to Item 5(a), Section II (page 2), Form 301, Alpha, a general partnership, lists Dick Harold and Kent Smith as two principals of Summit Ventures, Ltd., Inc., a 40% partner, and Joseph R. Valentine and Edward W. Richardson as principals of Valentine & Richardson Investments, a 3.3% partner. However, applicant has not provided the additional required information, i.e. residence, address, etc. In addition, Summit is also shown as, "Summit Ventures, Inc." in Exhibit 1. Clarification is required. Applicant shall amend its application by submitting the required information.

4. Alpha has indicated that in the event of a grant of the construction permit Shawn H. Herpin will sever all connections with station WVOD(FM), Manteo, North Carolina. Accordingly, an appropriate condition will be specified.

5. The engineering data submitted by the applicant below does not clearly demonstrate that it provides a 3.16 mV/m signal to the entire proposed city of license, as required by Section 73.315(a) of the Commission Rules (The applicant proposes only approximately 65% city coverage with the required 3.16 mV/m signal):

APPLICANT	WAIVER JUSTIFICATION
Jones	Environmental and airspace considerations

The following applicant has not shown circumstances which persuade us that grant of a waiver of Section 73.315(a) is warranted and, accordingly, an issue will be specified: Jones

6. The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after December 13, 1986, the last date for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT	DATE AMENDMENT FILED
Radiophone	4/7/87

7. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and population which would receive FM service of 1 mV/m or greater intensity, to-

gether with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the following applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by the applicant below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding. *APPLICANT* : Jones

9. In response to Section VI of FCC Form 301, Coastal indicated that it will employ five or more fulltime employees. Therefore, it is required to submit the five-point Model Equal Employment Opportunity (EEO) Program (FCC Form 396A). The guidelines to the Model EEO Program, paragraph IV, instruct the applicant to specify the recruitment sources that it proposes to use. Coastal has not provided specific recruitment sources for women in its EEO program. Applicant shall amend its application within 30 days of the release of this Order by submitting specific sources of recruitment for women to the presiding Administrative Law Judge.

10. *Multiple Ownership*. Surfside has described its organizational structure as a limited partnership. The Commission's policy is that the involvement of a limited partner in the management structure will not exempt that partner's broadcast interests for attribution purposes in the comparative phase of the proceeding. *Report and Order* in MM Docket 83-46, 97 FCC 2d 997 (1984), *modified on reconsideration* 50 Fed. Reg. 27438 (1985). Applicant has offered no certification that the specified limited partners will be sufficiently insulated from the management and operation of the media-related activities of the applicant and do not violate our cross interest policy. Accordingly, unless Surfside submits a statement to the presiding Administrative Law Judge within 30 days of the release of this Order demonstrating that the limited partners will be sufficiently insulated from the management and operation of the media-related activities of the applicant, an issue will be specified to determine whether the specific limited partners' involvement with the proposed station violates Section 73.3555 of the Commission's Rules or the Commission's cross interest policy.

11. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposal of the following applicant would provide coverage of the city sought to be served, as required by Section 73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant waiver of that Section: Jones

2. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: Jones.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

13. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant shall inform the presiding Administrative Law Judge as to whether a corrected local notice of the filing of the application has been republished: Dorsey

14. IT IS FURTHER ORDERED, That Alpha shall amend its application by submitting the information, as specified in paragraph 3 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That in the event of a grant of the application of Alpha, the construction permit shall contain a condition that program tests will not be authorized until the permittee has shown that Shawn H. Herpin has divested himself of all interest in, and severed all connections with station WVOD(FM).

16. IT IS FURTHER ORDERED, That the petition for leave to amend filed by the following applicant IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein: Radiophone

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicant shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge: Coastal

19. IT IS FURTHER ORDERED, That Surfside shall submit to the presiding administrative Law Judge, if appropriate, within 30 days of the release of this Order, statements certifying that its listed limited partners will be sufficiently insulated from the management and operation of the media-related activities of the applicant and would not be in violation of the Commission's cross interest policy.

20. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

21. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **June 27, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

22. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
SOUTH CENTRAL TELEPHONE
COMPANY, AND UNITED
TELEPHONE SYSTEM COMPANIES

Petitions for Waiver of Sections
69.205 and 69.206 of the
Commission's Rules

ORDER

Adopted: May 26, 1988; Released: June 6, 1988

By the Deputy Chief, Common Carrier Bureau:

1. Southern Bell Telephone and Telegraph Company and South Central Bell Telephone Company (BellSouth), and the United Telephone System Companies (UTS) have filed petitions requesting waivers of Sections 69.205 and 69.206 of the Commission's Rules, 47 C.F.R. §§ 69.205 and 69.206. Pursuant to these rule sections an interexchange carrier (IC) is deemed to receive premium access if access is provided through a local exchange switch converted to equal access. The waivers would permit these two companies to offer ICs an additional option in how their 800 service traffic is routed.

2. BellSouth and UTS propose to route 800 traffic originating in non-equal access end offices over trunks which currently carry ICs' tandem routed Feature Group D (FGD) traffic. These trunk groups at the tandem are engineered to premium trunk group standards. BellSouth and UTS would charge premium rates for this service. Neither petition is opposed.[1]

3. ICs have requested this service in the past because they have experienced significant revenue losses as a result of Feature Group B (FGB) toll fraud.[2] Routing of FGB traffic over FGD trunks would permit ICs to continue to offer FGB services, such as travel card service, while providing the benefits of FGD signaling, such as the automatic number identification optional feature, which could assist them in the detection of fraud. [3]

4. We note that these carriers' proposals are strictly options and the ICs have apparently expressed the desire for them. Therefore, we find that the public interest will be served by grant of the requested waivers.

5. IT IS THEREFORE ORDERED that the petitions for waiver of Sections 69.205 and 69.206 filed by Southern Bell Telephone and Telegraph Company, South Central Telephone Company, and the United Telephone Systems Companies ARE GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Carl Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] We note that these petitions closely resemble petitions granted to Pacific Bell and Southwestern Bell. *See* Pacific Bell, Transmittal No. 82, 2 FCC Rcd 4423 (1987); Southwestern Bell, Petition for Waiver, 2 FCC Rcd 3919 (1987).

[2] *See* Pacific Bell, 2 FCC Rcd 4423 (1987).

[3] *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-579

In the Matter of

Access Billing Requirements
for Joint Service Provision

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: May 26, 1988; Released: June 6, 1988

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On December 22, 1987, the Common Carrier Bureau (Bureau) released a Memorandum Opinion and Order that examined the subject of meet point billing and evaluated the meet point billing provisions filed by the local exchange carriers (LECs) in their October 2, 1987 annual access tariffs.[1] The *December 22 Order* found that "numerous carriers have disregarded or misunderstood the Commission's and this Bureau's pronouncements on meet point billing tariff revisions." *Id.* at para. 26. We accordingly stated that we would initiate an investigation into various meet point billing issues. In this Order we designate issues and establish a filing schedule for that investigation.[2] We also address issues raised in a petition for clarification filed by Continental Telephone Company (Contel), [3] and we extend until August 31, 1988 the effective date of meet point billing tariff provisions that require revision.

2. The *December 22 Order* noted that the subject of meet point billing has been before the Commission on various occasions since 1983, and outlined the history of Commission and Bureau pronouncements on this issue.[4] That Order described a report adopted by the Exchange Carriers Standards Association, Inc. Ordering and Billing Forum (OBF) (ECSA Report). The ECSA Report was filed in December 1986. . In an order released on July 31, 1987, the Commission determined that LECs and interexchange carriers (ICs) should be guided by the terms of the ECSA Report.[5] The *December 22 Order* also cited the Commission's determination that meet point billing tariff provisions embodying these standards should become effective January 1, 1988. *Id.* at paras. 39, 41. In addition, the *December 22 Order* found that the tariff provisions relating to meet point billing filed with the annual access tariffs in October 1987, while failing to meet all the requirements the Commission had established, should nonetheless become effective as scheduled, but on an interim basis.[6] We stated that we expected to require LECs to make certain tariff modifications to be effective after that interim period.

3. Finally, the *December 22 Order* clarified certain requirements imposed by the *July 1987 Order*, in several areas that stimulated comment in the pleadings: (1) the amount and specificity of information to be included in the filings, including the referencing of industry standards; (2) the showing required to justify selection of the default option; (3) local transport termination (LTT) and channel mileage fixed (CMF) charges; (4) the need for 30 days' notice of any change in meet point billing arrangements; and (5) the use of billing percentages as opposed to interconnection points. We found that three of these issues remain for further investigation: default option justification; LTT and CMF charges; and the notice provision.[7]

II. ISSUES FOR INVESTIGATION

A. *Selection of the Default Option*

4. We tentatively found in the *December 22 Order* that most LECs had failed to provide sufficient justification for their use of the default/ multiple bill option. Carriers must meet a high standard to justify the selection of the multiple bill option, because the Commission expressed a strong preference for single bill options and because multiple billing creates verification problems.[8] Contel has petitioned for clarification on this point, and MCI Communications Corporation (MCI) has opposed the petition.[9]

5. Contel asks us to clarify the standard we will employ in evaluating LECs' use of the multiple bill option, and states that the waiver standard of "substantial justification" is inappropriate, since the Commission has stated that the default option does meet its requirements but is not the preferred option. Contel Petition at 1. Selection of this option, argues Contel, should not be seen as tantamount to a request for a rule waiver. *Id.* at 2. Contel argues that the Commission, in its *July 1987 Order*, recognized the need for flexibility, especially for small LECs, and the need to avoid coercion of one LEC by another. *Id.* Contel states that the Bureau's *December 22 Order* is thus inconsistent with the Commission's *July 1987 Order*, and asks us to clarify the standard in order to resolve this inconsistency. *Id.* MCI replies that the standard is clearly one of substantial justification, and that no inconsistency exists. MCI Opposition at 1-4.

6. We reemphasize that the Commission has expressed a strong preference for the use of single rather than multiple billing. Accordingly, implementation procedures must reflect that preference. While we are not requiring a waiver for carriers selecting the multiple bill option, we do require that a strong showing be made that none of the single bill options could be implemented.[10] As we have stated:

> [M]ere unsupported assertions of economic hardship, technological problems, or administrative burden will not suffice. If a carrier asserts that it has been unable to reach agreement with its joint providers, de- tailed information as to the ongoing attempts at contractual negotiations should be provided and the reasons for lack of resolution stated. Technical or economic difficulties compelling use of the default option should be detailed, and substantial supporting data provided.

December 22 Order at para. 38. This standard was virtually ignored by many LECs in their October 2 filings.

7. We restate here our intention to honor the Commission's standards designating the multiple bill option as a default option and one of last resort.[11] Carriers seeking to justify their reliance on the multiple bill option should follow the guidelines established in paragraph 38 of the *December 22 Order*. A statement of economic hardship must be accompanied by a showing of the estimated costs of conversion to a single bill option. A statement of technical impracticability must be accompanied by detailed discussion of technical considerations that compel the selection of multiple billing. The carrier must show how these technical procedures compare to procedures involved in the use of multiple billing methodologies, and whether a decision now to resort to multiple billing will preclude or restrict later conversion to a single bill option or will in any way impact technical development of the carrier's system and services. A statement of administrative burden must state exactly what that burden is, how it compares to the burden involved in using multiple billing, and why it outweighs the Commission's preference for single billing. In addition, a carrier proposing to use single billing for switched and multiple billing for special access service provision must justify its reliance on multiple billing for the latter in the manner discussed here, and must explain the differences that warrant the use of the default option for special, but not for switched, access service provision.

8. We expect that carriers will make every effort to agree on the use of one of the single bill options, and a statement that carriers providing joint service could not agree must be accompanied by details as to the date and content of attempted negotiations.[12] Furthermore, any carrier proposing to use multiple billing must include a detailed showing of its compliance with the verification requirements established in the MECAB.[13] In conclusion, all affected carriers should understand that the Commission has a strong preference for single rather than multiple billing, and that if they choose to use multiple billing they must make a showing that meets the Commission's guidelines to justify this choice.

B. *LTT and CMF Charges*

9. The *December 22 Order* concluded that transport termination charges warrant investigation. We said that no carrier will be permitted to assess a transport termination charge *per se* when it is an intermediate, non-terminating carrier in a given arrangement, unless it fully justifies such application. We also recognized that LECs often calculate LTT and CMF rates on an averaged basis, especially if the LECs have a high proportion of jointly-provided service. The averaging process used in developing these rates is thus an issue for designation. We require each direct case to clarify the methodology used to arrive at LTT and CMF rates, and to evaluate the impact of these rates on both jointly-provided circuits and circuits provided solely by an individual LEC. The direct cases must also discuss the interaction between and among different carriers of the different applications of these charges.[14]

C. *30 - Day Notice Provision*

10. The majority of carriers have indicated a willingness to include a 30-day notice provision in their tariffs if directed to do so. The *December 22 Order* stated that we desired that such a provision should be included. We accordingly direct carriers filing in this proceeding to include a tariff provision providing 30 days' notice of any change in, or initiation of, a meet point billing arrangement.[15]

D. *Additional Issues*

11. The OBF and various parties to this proceeding have raised questions regarding the feasibility of applying to Feature Group A (FGA) and Feature Group B (FGB) service provision the meet point billing standards and requirements discussed herein. We solicit comments on this matter. Further, we solicit comments on the desirability of differentiating between switched access and special access service provision in the application of these standards. Comments on these matters should be submitted at the same time as, but under separate cover from, the direct cases, and will be subject to the same comment and reply cycle as the direct cases.

III. PROCEDURAL REQUIREMENTS

12. This investigation will be conducted as a notice and comment proceeding. Any LEC participating with one or more other LECs in the provision of access service is required to file a direct case. Persons who filed pleadings on this subject in connection with the 1988 access tariffs are also designated as parties here. Direct cases shall be filed no later than **June 27, 1988,** and shall address the issues discussed above and provide all required information. The direct case must supply all information upon which the LEC relies to support its position. Pleadings opposing or commenting upon direct cases may be filed no later than **July 18, 1988,** and should be captioned "Opposition to Direct Case" or "Comments on Direct Case." The LEC parties may file a "Rebuttal," so captioned, to oppositions and comments no later than **August 2, 1988.**

13. An original and seven copies of all pleadings shall be filed with the Acting Secretary of the Commission. In addition, one copy shall be delivered to the Commission's commercial copying firm, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, NW, Washington, DC 20554. Members of the general public who wish to express their views in an informal manner may do so by submitting one copy of their comments to the Acting Secretary, Federal Communications Commission, Washington, DC 20554.

14. *Ex parte* contacts (*i. e.*, written or oral communications which address either the procedural or substantive merits of the proceeding which are directed to any member, officer or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of scheduled Commission consideration of a final Order is released and after the final Order itself is issued. Written *ex parte* comments must be filed, on the same day submitted, with the Acting Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served, on the same day presented, on the Acting Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. §§ 1.1200 *et seq.*

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), that the issues set forth above ARE DESIGNATED FOR INVESTIGATION.

16. IT IS FURTHER ORDERED that the petition for clarification of Continental Telephone Company IS GRANTED to the extent noted herein.

17. IT IS FURTHER ORDERED that the local exchange carriers submit tariff revisions in order to extend the expiration date of their current meet point billing provisions through August 31, 1988. Such revisions should be filed no later than June 29, 1988, to become effective June 30, 1988. For this purpose, Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59, are waived, and Special Permission number 88-240 is assigned.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 87-579, Memorandum Opinion and Order, DA 87-1858, released Dec. 22, 1987 (*December 22 Order*).

[2] We note also the change in the title of this proceeding. We have determined that the former title, Waiver of Access Billing Requirements and Investigation of Permanent Modifications, is no longer appropriate, and that a more accurate description of the subject matter of our investigation is needed.

[3] Petition for Clarification, filed by Continental Telephone Company on January 21, 1988 (Contel Petition).

[4] When the facilities of two or more local exchange exchange carriers are used to provide access service, the bills can be calculated by single company billing or by meet point billing. Single company billing means that the LEC whose territory contains the IC's point of presence determines the charges, arranges to provide the service, performs the billing, and settles accounts with the other LECs involved in providing the service. Meet point billing means that the affected LECs divide ordering, rating and billing services on a proportional basis, so that each carrier bills under its respective tariff. The Commission required carriers to delete the single company billing option, because it resulted in the charging of rates based on the tariff of a LEC other than the one providing service to the customer. Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, 97 FCC 2d 1082, 1283 (1984). Accordingly, LECs involved in joint provision of service are required to use meet point billing. This requirement was waived in three successive Orders, because it appeared that the technical and administrative difficulties of implementing meet point billing outweighed any harm that might be caused by use of the single company billing option for a limited period, until those difficulties could be resolved. In Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Mimeo No. 2964, released Mar. 16, 1984, the Bureau waived the requirement until June 1985. In Petitions for Waiver Concerning 1985 Annual Access Tariff Filings, Mimeo No. 5007, released June 7, 1985, we extended the waiver until April 1, 1986. In Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, Mimeo No. 3402, released Mar. 28, 1986 (*March 28 Order*), we extended the waiver until January 1, 1988.

[5] Waiver of Access Billing Requirements and Investigation of Permanent Modifications, CC Docket No. 86-104, 2 FCC Rcd 4518 (1987); Erratum, CC Docket No. 86-104, 2 FCC Rcd 4731 (1987) (together, *July 1987 Order*). The ECSA Report recommends that all LECs comply with the following OBF documents: Multiple Exchange Carrier Access Billing Guidelines (MECAB); Multiple Exchange Carrier Ordering and Design Guidelines (MECOD); and Carrier Access Billing Output Specifications (CABS). The Commission's *July 1987 Order* accepted the ECSA Report and its recommendations, and determined that the general waiver of meet point billing requirements for Feature Groups C and D (FGC and FGD), Special Access, and the local transport component of Interstate Directory assistance services would expire on January 1, 1988. The Order allowed two options, as recommended by the ECSA Report: the single bill option (as distinct from the single company billing option, described in note 4, *supra*, and rejected by the Commission), or the multiple bill option. The single bill option could take one of three forms: single bill/multiple tariff; single bill/pass-through tariff; or single bill/single tariff. The Commission determined that the single bill option, in one of its three forms, was preferable to the multiple bill option because the former enhances billing accuracy and customer convenience in access service bill verification. 2 FCC Rcd at 4519. The Commission stated that the multiple bill option should be used as a default option only. *Id.*

[6] We required that carriers file tariff provisions to be effective January 1, 1988 containing (1) a reference to and incorporation of the MECOD and MECAB, and (2) an expiration date of June 30, 1988, the period we considered sufficient for our investigation of the remaining meet point issues. In this Order we postpone the expiration date of meet point provisions to August 31, 1988.

[7] The other two issues were satisfactorily resolved in the *December 22 Order*. First, we announced a six-month phase-in period for the conversion from interconnection points to billing percentages, in keeping with the MECAB requirement. *Id.* at para. 42. (This phase-in is to be completed by June 22, 1988, and is not subject to the postponement announced in this Order). Second, we determined, as discussed above, that the LECs must incorporate in their tariffs, effective January 1, 1988, the MECAB and MECOD guidelines on the amount and specificity of information on meet point billing that carriers are required to provide. *Id.* at paras. 28-37, 44.

[8] The Commission's concerns centered on simplicity, clarity, uniformity, and the ease of verification of billing information by customers.

[9] Opposition to Petition for Clarification filed by MCI Communications Corporation, February 1, 1988 (MCI Opposition).

[10] If we determine that the transition to single bill options is stalled by the unwillingness of LECs to negotiate such arrangements, we will consider requiring single bill options only. In that case, a waiver would become necessary before multiple bills could be used.

[11] Several parties have suggested informally to Commission staff that the OBF, in adopting multiple billing as a "default" option, meant only that if no agreement was made to use either single billing or multiple billing, then multiple billing must be used. This interpretation would result in the establishment of the multiple billing option as the norm, an option at least as desirable as single billing -- a conclusion we reject, for the reasons discussed above and in the *July 1987 Order*.

[12] We understand that in some cases one carrier simply informs another that multiple billing will be used. This is not acceptable and will not justify selection of the default option. We note that the Commission's standard for justification of this selection is thus somewhat different from some carriers' interpretation of the MECAB guidelines. *See* note 11, *supra*.

[13] *See* , *e. g.*, MECAB Sections 5.03 and 7.04. We refer generally to those sections of the MECAB that are related, and identified as applicable, to the multiple bill option.

[14] In this section of the direct case, LECs should specify each function performed and the cost associated with that function when service is provided by two or more LECs. If a LEC is using the termination charge to make partial recovery of non-recurring costs (NRCs), it should show how the NRCs have been divided between CMF and LTT charges, and should demonstrate that the transport termination charge does not exceed the transport termination costs. Each direct case should also evaluate the averaging process used to derive the LTT and CMF rates, and the impact of these rates on jointly and individually provided circuits. In its evaluation the LEC should consider the number of circuits provided by multiple carriers compared to the number provided individually, and should state whether significant differences exist among ICs as to this ratio. The direct case should detail how the rate structures of other LECs affect total charges paid by users of access services provided by two or more LECs. The direct case should discuss any benefits, such as telephone company rate-making efficiency or ease in developing recovery of portions of costs of jointly-provided service, to be gained by using LTT and CMF rate elements. The direct case should describe the impact of LTT rate elements on the derivation of billing percen-tages, and should indicate how these rate elements are reflected. LECs should explain how different rate-making methods, such as different methods used in averaging LTT or LTT-type rates, can be reasonable if they may result in a customer's paying more than 100 percent of the costs of service provided by multiple LECs. Finally, the direct case should explain the circumstances under which an intermediate carrier could justify an LTT or portion of an LTT charge.

[15] *See* MECAB page 15.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE and TELEGRAPH COMPANY — Transmittal No. 1105

Revisions to Tariff F.C.C. No. 1

ORDER ON RECONSIDERATION

Adopted: May 25, 1988; Released: June 6, 1988

By the Deputy Chief, Common Carrier Bureau:

1. The captioned revisions to the American Telephone and Telegraph Company's (AT&T) Dial-It 900 Service became effective on March 14, 1988, and the Common Carrier Bureau released an Order denying petitions to reject or suspend the tariff revisions. AT&T Tariff F.C.C. No. 1, Transmittal No. 1105, DA 88-371, released March 21, 1988 (*March 21 Order).* [1] AT&T's Dial-It 900 Service permits "sponsors" to furnish, for a fee, live or recorded messages and information programs. AT&T's tariff revision deleted these promotional compensation arrangements for Dial-It 900 Service from its tariff.[2] Previously, AT&T had compensated sponsors for providing their message services. [3] With the deletion of promotional compensation, sponsors who wish to receive compensation for providing message services must attempt to negotiate a contract with AT&T under its premium billing arrangement, an unregulated offering.[4]

2. On March 18, 1988, S.H.L., a sponsor of "adult" messages using AT&T's Dial-It 900 Service, filed a petition for reconsideration and immediate stay of the effectiveness of the *March 21 Order*.[5] S.H.L. argues that AT&T's tariff revision is illegally discriminatory under Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), because it implements a scheme that differentiates between "adult" and "non-adult" sponsors. S.H.L. Petition at 6. It also asserts that the tariff deprives S.H.L. of 100 percent of its revenues and is therefore unjust and unreasonable under Section 201(b) of the Act, 47 U.S.C. § 201(b).[6] Finally, S.H.L. alleges that the tariff revision operates as an "illegal form of censorship in violation of the First Amendment to the [U.S.] Constitution" by denying S.H.L. any practical means of reaching its audience. S.H.L. Petition at 6.

3. The Common Carrier Bureau has reviewed S.H.L.'s petition for reconsideration. We conclude that it should be dismissed under Sections 1.102(b)(2) and 1.106(a)(1) of the Commission's Rules, 47 C.F.R. §§ 1.102(b)(2), 1.106(a)(1), which preclude reconsideration of interlocutory actions. The Bureau recently reiterated that an Order denying a petition to reject is merely a determination that a tariff revision is "not patently unlawful."[7] That Order also concluded that a decision to deny a petition to investigate is not subject to reconsideration. We observed that "such a decision is also provisional in nature because it does not preclude the Commission from initiating an investigation of the tariff provisions in question at a later date and does not preclude aggrieved persons from filing a Section 208 complaint to challenge the rates or provisions in question." *Id.* at para.7. Such a limited decision is an interlocutory action.

4. For the foregoing reasons, IT IS ORDERED that under the authority of Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the petition for reconsideration filed by S.H.L. Enterprises IS DISMISSED.

5. IT IS FURTHER ORDERED that the motion for stay filed by S.H.L. Enterprises IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief (Policy)
Common Carrier Bureau

FOOTNOTES

[1] In addition to denying S.H.L. Enterprises' (S.H.L.) petition to reject and its petition for stay or suspension, the *March 21 Order* also denied S.H.L.'s motion to accept its late-filed pleadings. S.H.L. also filed a supplemental motion on March 11 asking the Commission to construe its pleadings as an informal complaint under 47 C.F.R. § 1.41. That request is under consideration.

[2] The tariff revision also reduced the initial minute rate for a 900 Service call from.50 to.45. AT&T Transmittal at 2.

[3] Sponsors received from.02 to.05 per call or call minute over 2,000 per day, depending on call volume.

[4] We note that there are a number of complaints on record with the Commission which challenge AT&T's premium billing arrangement. *See, e.g.,* Enforcement Division File No. IC 88-00480. We further note that our decision to deny petitions to reject or suspend the tariff transmittal did not prejudge the outcome of those complaint proceedings.

[5] AT&T did not oppose the petition. On March 21, S.H.L. filed a declaration in support of its petition by Philip Spinola, S.H.L.'s Advertising Manager.

[6] S.H.L. also argues that because AT&T intends to continue compensating sponsors of non-adult programming, AT&T has conceded the necessity of compensation and has therefore "undermined its only purported justification for the rate change effected by the revision." S.H.L. Petition at 12-13. AT&T stated that it was removing compensation because demand has exceeded available circuit capacity. AT&T Letter, Transmittal No. 1105 at 1.

[7] Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1537 and 1560, DA 88-480 at para. 6, released Apr. 22, 1988; Erratum, DA 88-687, released May 26, 1988. That Order dismissed petitions for reconsideration, investigation, and clarification of an Order denying a petition to reject and petitions to investigate those transmittals. *See also* AT&T Communications, 1 FCC Rcd 930, 931 (1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
General Telephone Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs — AAD 7-1690

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 1988; Released: June 6, 1988

By the Chief, Common Carrier Bureau:

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I. INTRODUCTION AND BACKGROUND

1. On August 28, 1987, the General Telephone Operating Companies (GTOC)[1] filed a cost allocation manual pursuant to the *Joint Cost Order* [2] governing the accounting separation of GTOC's regulated and nonregulated costs. Consistent with the requirements of the *Joint Cost Order*, GTOC implemented the manual on January 1, 1988, concurrent with the implementation of the revised Uniform System of Accounts (USOA). [3] The manual includes a list of GTOC's nonregulated activities, a list of activities GTOC treats as incidental to regulated activities for accounting purposes, information on affiliate transactions, information on employee time reporting, and information describing how each revised USOA account is allocated between regulated and nonregulated activities.

2. Three parties filed comments on GTOC's manual, and GTOC filed a reply.[4] In addition to reviewing the pleadings, we have conducted our own review of the GTOC manual for consistency with the Commission's rules. We have concluded that while the GTOC manual is deficient in some respects, its format and content generally provide the Common Carrier Bureau (Bureau) with a sufficient understanding of the proposed cost allocation procedures to permit us to make an informed judgment as to the ability of the manual to prevent cross subsidy. We conclude that, overall, GTOC's manual provides sufficient assurance against the misallocation of costs and revenues to permit GTOC to continue to apply the manual pending submission of a revised manual that meets all Commission requirements.

3. We require that in certain instances GTOC specify in greater detail the procedures it intends to follow in allocating the costs and revenues of regulated and nonregulated activities, and in some cases, correct ambiguities and omissions in its manual. We require GTOC to submit revisions to its manual, and we shall solicit public comment on them. Any revisions to the manual that result from the instant Order approving the manual or a subsequent order concerning the revisions will be made effective retroactive to January 1, 1988. GTOC shall, in addition, file midcourse corrections to its 1988 access and other FCC tariffs where necessary to reflect whatever substantial modifications in cost allocation procedures we require in this and subsequent orders.[5] We therefore approve GTOC's cost allocation manual subject to a number of conditions and requirements for the submission of further information.

4. This Order is divided into three substantive sections. Section II discusses general issues, including portions of the manual that relate to incidental activities, nonregulated activities, affiliate transactions, and employee time keeping. Section III discusses issues raised in connection with the proposed apportionment methods and specific accounts. Section IV discusses certain procedural issues, as well as information concerning the procedural requirements for updating cost allocation manuals.

II. GENERAL ISSUES

A. Overall Sufficiency of the Manual

5. The *Joint Cost Order* listed five types of information that must be included in the cost allocation manuals: (a) a description of each nonregulated activity; (b) a list of all the activities the company now accords incidental accounting treatment, and the justification for treating each as incidental; (c) a chart showing all corporate affiliates; (d) a statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms and frequency of such transactions; and (e) for each USOA account and subaccount, detailed specifications of the cost categories (or cost pools) to which amounts in the account or subaccount will be assigned, and of the allocation method for each cost category (or pool).[6] In addition, the manuals must contain a description of the methods used to teach, monitor, and enforce accurate time reporting, along with a description of the allocation method for nonproductive time.[7]

6. MCI and Ohio argue that GTOC's cost manual reveals little about GTOC's cost accounting procedures and that therefore it cannot be effectively reviewed.[8] According to MCI, GTOC's proposed manual will not permit accurate future audits because it does not adequately describe or define critical cost data and essential cost allocation processes.[9] Ohio asserts that a letter from GTOC's outside accountants that accompanies the manual states that detailed methods, procedures and practices necessary to support the cost allocation process are not yet established, and consequently no evaluation or opinions as to the propriety of these methods, procedures and practices can be made.[10]

7. GTOC argues in response that MCI's comments amount to an argument against the Commission's decision to rely on accounting safeguards as a means to prevent cross subsidy, and that the argument is not germane to the question of whether the manual complies with established Commission policies.[11] Additionally, GTOC states, its cost manual supplies the level of detail contemplated by the Commission, and like the Separations Manual, will be supported by additional internal procedures which reflect the principles and processes outlined in the manual.[12] GTOC observes that Ohio makes only general comments without offering any references to specific accounts, cost pools or methodologies.[13] Moreover, GTOC notes, Ohio's comments concerning GTOC's accountant's statement are incorrect and out of context.[14] GTOC explains that its accountant states that the methods, procedures and practices are in the process of being developed and implemented by GTOC, and that following that implementation, annual independent audits will be able to be performed.[15]

8. Our review of GTOC's manual, as well as the comments and reply comments filed in this proceeding, reveal that GTOC's manual is sufficient to discourage cross subsidy. While a number of ambiguities and omissions exist, the problems with the manual can be readily corrected with the filing of additional information and amendments. GTOC has addressed each of the subject-matter areas required by the Commission, although some are not discussed in the detail we require. We do not believe that the defects in the GTOC filing require its rejection. Instead, we believe that the best procedure is to allow GTOC to continue to apply its manual, subject to the amendments we require in this Order and to our further orders.

9. In making this evaluation, we have examined the GTOC manual in detail to determine if the information provided permits us to make an informed judgment that the proposed manual will discourage cross subsidy. We have specifically explored cost allocation proposals to determine whether the GTOC manual provides us with a clear understanding of the basis upon which cost categories are formulated, and whether the manual provides a clear understanding of how the costs reflected in the cost categories are allocated between regulated and nonregulated activities. We find that, overall, the manual provides us with the level of understanding necessary to conclude that the manual procedures will discourage cross subsidy. For certain GTOC proposals, however, the submission of additional information is necessary before we can make this conclusion. We therefore require GTOC to submit additional information in the form of amendments to the manual, as a condition of our approval of its manual. We will solicit public comment on any changes that GTOC makes to its manual as a result of this Order.[16] In order to provide guidance to GTOC in fashioning its amendments, we will address each of the issues raised by the commenting parties, along with additional issues we have identified.

B. Nonregulated Activities

10. The GTOC manual provides the required description of its nonregulated activities.[17] The manual divides nonregulated activities into two basic categories – (1) activities which have never been subject to tariff regulation and (2) activities which the Commission has preemptively detariffed. Under the first category GTOC lists: (a) advanced services test bed (ASTB); (b) central office products and services; (c) equipment services; (d) fleet services; (e) network services; (f) sale or lease of computer software; (g) telemarketing services; and (h) training services. GTOC states that these activities may be treated as incidental activities if the incidental qualitative guidelines described in its manual are met. Under the second category of services GTOC lists: (a) customer premises equipment (CPE); (b) electronic funds transfer (EFT); (c) information services; and (d) inside wire services.

11. GTOC's proposed treatment of nonregulated activities that have never been subject to tariff regulation does not comply with Commission requirements because it states that some of these activities may be treated as incidental. In the *Joint Cost Order*, the Commission determined that such nonregulated activities generally should be treated as nonregulated activities for accounting purposes. The only exception to this general requirement is for incidental activities, *i. e.*, activities that are treated as regulated activities for accounting purposes even though they have never been subject to regulation.[18] The Commission specifically required that each carrier specify in its initial cost allocation manual precisely which activities it proposes to treat as incidental activities.[19] The Commission stated that the nonregulated activities section must be restricted to nonregulated activities that would be treated as nonregulated activities for accounting purposes. GTOC has not met these requirements and must therefore amend its cost manual to include *only* activities that will be treated as nonregulated activities for accounting purposes in this section.

C. Incidental Activities

12. GTOC's manual also provides, as required, a list of nonregulated activities that are offered on an incidental basis to regulated activities.[20] In the *Joint Cost Order*, the Commission permitted carriers to account for incidental activities as regulated activities, provided that the activities meet the following quantitative and qualitative tests: (a) the activity must be an outgrowth of regulated operations; (b) it cannot constitute a separate line of business; (c) it must have traditionally been treated as incidental for accounting purposes; and (d) the total of all incidental activities must not exceed one percent of a carrier's total revenues.[21]

13. Our review of the incidental activities section leads us to conclude that GTOC must make several amendments to that section of its manual. First, the manual states that the activities GTOC lists as incidental may be treated as nonregulated if the incidental qualitative guidelines described in the manual are not met.[22] This treatment is not in conformance with the *Joint Cost Order* and we require GTOC to restrict the incidental activities section of its manual to activities that will be accounted for as regulated activities.

14. Second, as we stated in the *Ameritech Order*,[23] companies must explain how each activity meets all the criteria listed in the *Joint Cost Order*. While GTOC states that its incidental activities will meet the Commission's *Joint Cost Order* guidelines,[24] the manual also allows GTOC to classify incidental activities as nonregulated activities if the incidental guidelines are not met.[25] We require GTOC to justify its incidental activity classification for each incidental activity and to include these justifications in its manual. Finally, and in a similar manner, we required in the *U S West Order* [26] that each manual provide sufficient information to enable us to determine the nature and scope of each activity proposed for incidental treatment.[27] Here again the GTOC manual falls short of providing the information we expect. GTOC generally provides a brief description of each incidental activity. However, we cannot determine if each activity fits into the qualitative *Joint Cost Order* criteria based on GTOC's descriptions. GTOC must amend its descriptions to include the nature and scope of each incidental activity.

D. Affiliate Transactions

15. The *Joint Cost Order* establishes specific rules governing the provision of assets and services to and from affiliates. These rules were created in order to discourage carriers from avoiding the cost allocation rules through affiliate transactions. For example, if a carrier sought to avoid the application of fully distributed costing, it could, in the absence of the affiliate transaction rules, provide assets or services to or from a separate but affiliated company to cause the nonregulated operations to bear less than the carrier's fully distributed cost for the asset or service. The affiliate transaction rules specify the valuation standards that will be applied in accounting for transactions between a carrier and its affiliates. Those rules vary depending upon whether the transaction involves assets or services.[28] The *Joint Cost Order* also required that carriers include in their cost allocation manuals "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and frequency of such transactions."[29]

16. Our review of GTOC's treatment of affiliate transactions reveals that GTOC has closely followed the requirements of the *Joint Cost Order*. We note that no commenting parties objected to GTOC's affiliate transactions procedures. There are, however, some areas in which GTOC could clarify its presentation of affiliate transactions.

17. Our review of the GTOC manual indicates that GTOC made every effort to comply with Section 32.27 of the Commission's Rules.[30] It is not clear, however, from reading the nature and terms of the transactions whether GTOC is describing a transaction involving asset transfers or one involving services. For example, the manual states that the nature of GTOC's transactions with GTE Consumer Communications Products Corporation is "Telephone and parts" at "Market rate."[31] The heading of this particular schedule is "Nonregulated affiliated company *services* provided to the GTOCS" (emphasis added). Thus, it is unclear whether or not the transaction involves asset transfers, services, or some combination of the two. GTOC must revise its manual to classify in a clearer manner each of its affiliate transactions.

18. The affiliate "GTE Directories Corporation" is another item in this section for which additional information is necessary.[32] Here the heading indicates that the transaction involves a service provided to GTOC at market rate. We articulated our standards regarding market rate pricing in the *US West Order*.[33] In that *Order*, we stated that when a carrier provides an untariffed service to a nonregulated affiliate, the carrier must record the transaction at the carrier's fully allocated costs unless there is a prevailing company price (that price applies even if it is lower than the carrier's fully allocated costs and the service must actually be provided to a sufficient number of unaffiliated persons or entities to establish a prevailing price). We also stated that when a nonregulated affiliate provides a service to a carrier, the affiliate must record the transaction at the prevailing company price even if that price is higher than the affiliate's fully allocated costs. However, the mere offering of a service to unaffiliated persons or entities does not establish a prevailing company price. The nonregulated affiliate must either provide the service to unaffiliated persons or entities, or the operating company must receive the service from a nonaffiliate a substantial portion of the time.[34] GTOC defines market rate in its manual as "the price actually given in current market conditions where both buyers and sellers are willing to consummate an arm's length transaction."[35] This definition does not comply with the standards articulated in the *U S West Order*, nor does it explain how the market rate is determined for the transaction with the GTE Directories Corporation where the terms of the transaction are determined by a contract. The definition of market rate in the contract is not disclosed. GTOC must modify its definition to comply with our criteria. This definition should apply to each GTOC affiliate transaction subject to market rates.[36] GTOC should also specify that its contractual agreements with market rate terms comply with our standards above.

E. Employee Time Reporting

19. The *Joint Cost Order* permits carriers to select from among several methods of recording employee time. The Commission reasoned that, since the use of wages and salaries would serve as an important technique in the allocation of costs, it was important that carriers use accurate methods of recording employee time. The Commission further found that no one time reporting system would provide accurate results in all situations. Carriers were therefore free to propose the use of positive time reporting, exception time reporting, or time and motion studies.[37]

20. In its cost manual, GTOC proposed using four time reporting methods: positive time reporting, survey time reporting, apportioned time reporting and exception time reporting. There were no comments filed regarding GTOC's time reporting procedures and methods.

21. GTOC presents two methods not specifically mentioned in the *Joint Cost Order* – survey and apportioned time reporting. Our review focused on determining if the descriptions of these two methods are sufficiently detailed in the manual. Survey time reporting is a form of time study. We approved time studies as an acceptable reporting system in the *Joint Cost Order*. Some of the terms used to describe this method, however, need explanation. GTOC states that the studies are done for periods of two weeks or more.[38] The manual further states that such study periods will be representative of the calendar year through the selection of a point in time that is representative of the entire year.[39] Arriving at a representative period is a highly subjective determination. GTOC must

identify, by function utilizing this method, the representative period in terms of both the length of the survey and the time of the year considered most representative for a given function. These identifications must include justifications for both selections (length and time of year).

22. Apportioned time reporting derives its results from other employees who are subject to positive or survey time reporting. We have no objection to this method as long as, to the extent that apportioned time reporting is based on survey time reporting, GTOC's manual includes the descriptions of the survey-time-reporting representative periods we directed GTOC to provide above.

F. Joint Use of Network Plant

23. In the *Joint Cost Order*, the Commission established that jointly-used network plant (central office equipment and outside plant) must be allocated based on a forecast of the peak relative nonregulated usage of the plant over its entire depreciable life. The Commission elected to adopt a forecasted use approach in order to reflect the nature of capital investment decisions, *i. e.*, that investment decisions are made in anticipation of future use.[40] On reconsideration, the Commission reduced the length of the forecast period to three years in recognition of the practical difficulties of forecasting relative use over a lengthy depreciation period.[41]

24. GTOC states in its cost manual that nonregulated activities which utilize the network will be charged the tariff rate, and therefore no allocation of costs is required aside from those costs directly assigned through use of the tariff.[42] GTOC notes that if in the future there is nontariffed use of the network by nonregulated operations, it will use a forward-looking allocation methodology to apportion costs to nonregulated activities and it will update its manual to reflect that change.[43]

25. Three parties commented on GTOC's omission of a foward-looking allocator for joint use of network plant. MCI states that by this omission GTOC does not comply with the basic cost allocation objectives of the Commission to shield ratepayers of regulated services from bearing the cost of nonregulated ventures, and fails to deter underforecasts of nonregulated plant usage.[44] Furthermore, MCI asserts, GTOC's manual imposes no effective penalty for underforecasts of nonregulated usage, and offers no true-up mechanism for the reconciliation of forecasts with actual usage.[45] Ohio objects to GTOC apportioning the digital electronic switching account directly to either regulated or nonregulated activities without basing the allocation on a forward-looking allocator.[46] IBM notes that although GTOC does not currently intend to use network plant jointly, and will provide transmission services used in its own nonregulated activities at tariffed rates, it should be required to revise its cost manual to implement the principle of allocation of investment risks before it begins to share investments.[47]

26. In response, GTOC states that the parties do not recognize the logic and underlying purpose of the rules for cost allocation of network plant.[48] GTOC asserts that so long as these facilities are employed entirely for purposes of furnishing regulated services, there is no requirement for use of a forward-looking allocator. GTOC reiterates its position that currently it uses central office equipment and outside plant only for regulated services, and has no plans to share network plant between regulated and nonregulated services. If the Commission believes that further clarification is necessary regarding the forward-looking allocator, GTOC concludes, it will update its manual for such clarification.[49]

27. We agree with GTOC on this issue. Since GTOC currently is not sharing network plant for the provision of regulated and nonregulated services, we see no need for it to have a forward-looking allocator.[50] However, if GTOC's three year forecasts of future operations indicate a planned sharing of network plant for regulated and nonregulated services, GTOC must amend its manual to provide for a forward-looking allocator.

G. Other Issues

28. Ohio argues that all costs associated with the development, implementation and utilization of GTOC's cost manual should be assigned to the nonregulated side of GTOC. This approach, according to Ohio, would be consistent with cost causative principles since the manuals would not be necessary were it not for the introduction of nonregulated activities.[51] In response, GTOC states that Ohio's argument is totally without merit. GTOC notes that the Commission never required structural safeguards for GTOC, and thus GTOC had been providing regulated and nonregulated activities on an integrated basis long before the requirement for the cost allocation manual was established.[52] GTOC argues that mandatory structural separation was eliminated for other local exchange carriers by the Commission for reasons that included realizing economies of scale which benefit the ratepayer. Additionally, GTOC states that allowing exchange carriers to provide nonregulated as well as regulated services on an integrated basis was done in the best interest of the ratepayers for regulated services.[53] It follows, GTOC asserts, that the cost allocation manual also benefits the regulated ratepayers, and thus the costs of nonstructural safeguards should be shared between regulated and nonregulated operations.[54]

29. The Commission stated in the *Joint Cost Order* that a carrier did not have to directly assign the entire cost of the annual independent audit to either regulated or nonregulated operations.[55] Similarly, we do not believe that the development, implementation and utilization costs associated with GTOC's cost manual should be assigned totally to nonregulated operations. Thus, we reject Ohio's argument.

III. ACCOUNT - BY - ACCOUNT ANALYSIS

30. GTOC's manual describes the methods it proposes to use to derive cost pools and the methods it proposes to use to allocate costs between regulated and nonregulated activities. This information appears in two places. First, GTOC provides a narrative description of its cost pool apportionment and cost allocation methods.[56] Second, GTOC provides apportionment and allocation information in a table format.[57] In addition to addressing the issues raised by parties with respect to the cost pool apportionment and cost allocation bases for individual accounts contained in the manual, we have reviewed the manual and identified additional issues to be resolved. Before discussing these specific account issues, however, we will discuss some general problems that relate to more than one account.

A. Procedures for Apportioning Costs into Pools

31. MCI contends that the pooling and apportionment processes in GTOC's manual are poorly defined and inadequately justified.[58] For example, MCI argues, while GTOC states that its manual outlines a procedure through which USOA accounts are transformed into multiple cost pools, the only explanation GTOC gives for this transformation is the assertion that the pooling process will be conducted through the performance of "functional analysis" of the USOA accounts.[59] Additionally, MCI states that GTOC provides neither a discussion of how this analysis will be conducted nor an explanation of the data on which the analysis is based.[60] Finally, MCI notes that GTOC's manual anticipates direct assignment for many cost pools, but the manual identifies only direct reporting as a basis for cost apportionment.[61]

32. In response, GTOC argues that MCI's comments are incorrect.[62] GTOC asserts that its cost manual is careful and precise in dealing with the question of apportioning costs into pools, and notes that Section 2, paragraph 2.2 of its manual states that GTOC will utilize a subaccount structure which specifically identifies labor and non-labor costs to specific subaccounts.[63] GTOC states that with the Commission's new USOA Part 32 accounts functionalized, the subaccount structure used by GTOC is inherently functional.[64] Furthermore, GTOC maintains, paragraph 2.2 of its cost manual provides for a functional analysis if GTOC's management determines that subaccounts are not the means to identify cost pools, and in Section 7.0, paragraph 7.3, the manual identifies the method of performing functional analysis and shows various cost pool apportionment bases.[65]

33. Our review of GTOC's cost manual satisfies us that GTOC has provided adequate explanations of the cost pool apportionment process. As GTOC noted in its reply comments, paragraph 2.2 of its manual provides a description of how costs are identified and reported, *i. e.*, labor costs by time reporting, nonlabor costs by manual or system journal entries, and then directly reported to accounts or subaccounts. In those cases that a functional analysis is used, each type of analysis throughout GTOC's cost manual is explained in paragraph 7.3 of the manual. For example, Account 2112, Motor Vehicles, is apportioned to cost pools based on an analysis of motor vehicle costs. In paragraph 7.3.3 of GTOC's cost manual, an example is provided showing that if 80% of total monthly motor vehicle costs are charged to regulated construction and plant specific expense accounts, then 80% of the total motor investment in that month will be apportioned to the regulated cost pool. Although in our discussion of specific accounts, below, we may question a particular cost apportionment procedure for a specific account, we believe that overall GTOC's cost apportionment procedures are adequate.

B. Accounts To Be Added

34. In the *Joint Cost Order*, the Commission required that carriers submit allocation proposals for each USOA account and subaccount.[66] Since that requirement would have mandated the allocation of amounts that are not used in the jurisdictional separations and interstate ratemaking processes, the *Automated Reporting Requirements Order* eliminated the allocation requirement for particular accounts. [67] Appendix C to that *Order* listed for the first time the particular USOA accounts and subaccounts that would be subject to joint cost reporting. In addition, the Commission required carriers to report on six additional accounts used in the interstate ratemaking process. These additional accounts are: Account 2004 (Telecommunication plant under construction-long term), Account 2441 (Conduit Systems), Account 4120 (Other accrued liabilities), Account 4360 (Other deferred credits), Account 5050 (Customer premises revenue), and Account 7150 (Gains and losses from disposition of land and artworks).[68]

35. Because the list released in the *Automated Reporting Requirements* proceeding was not available until after GTOC filed its manual, its manual omits several accounts contained in that list. The manual also omits three of the six accounts listed above. We direct GTOC to amend its manual to include allocation proposals for each of the omitted accounts. In its amendments, GTOC must include information on these accounts, and in particular, the portion of the accounts that are included in, or deducted from, the rate base.

C. Other Issues

36. MCI argues that with respect to human capital development, GTOC's manual does not offer an effective mechanism to limit cross-subsidies in favor of nonregulated operations.[69] MCI asserts that to the extent that employee training and development costs benefit nonregulated service offerings, but are recovered through regulated operations, improper cross subsidization occurs.[70] In response, GTOC states that employee training costs are recorded in the appropriate Part 32 account or GTOC subaccount through direct reporting.[71] Training charged to general plant or engineering would be included in the appropriate cost pool based upon a specific course analysis to determine the regulated or nonregulated benefits of such training.[72] General management development training costs are charged to the human resources cost pool and apportioned to regulated and nonregulated operations based on total company wages and salaries.

37. Our review of GTOC's cost manual shows that in paragraph 7.3.9, GTOC explains that training costs plant operations administration expense and engineering expense are apportioned based on an annual review of course content and the related benefit to regulated, common and nonregulated costs pools. However, GTOC's provides no further discussion of this matter. We require GTOC to provide specific examples of how this review and apportionment is conducted.

D. Specific Accounts

Account 1439 - Deferred Charges and Account 4120 - Other Accrued Liabilities

38. GTOC failed to propose allocation methods for these accounts. When GTOC amends its manual to provide for these accounts, GTOC must create several cost pools. For Account 1439, a cost pool shall be established for deferred charges related to compensated absences. For Account 4120, the cost pool shall be for liabilities related to compensated absences.

Account 2111 - Land and Account 2121 - Buildings

39. GTOC proposes to allocate the "multi-use land" and "multi-use buildings" cost pools in these accounts based on a "plant and support operations wages and salaries" ratio, which it describes as the ratio of total nonregulated wages and salaries (excluding nonregulated central office

wages) to total company wages and salaries (excluding total central office wages). It is unclear why nonregulated and total company central office wages are excluded from the determination of this ratio. GTOC must clarify this point.

Account 2112 - Motor Vehicles, Account 2116 - Other Work Equipment, Account 2122 - Furniture, and Account 2123 - Office Equipment

40. GTOC will allocate the "common" cost pools in each of these accounts based on the "support operations wages and salaries" ratio, described in its manual as the total nonregulated wages and salaries charged to customer and corporate operations, and plant nonspecific expense accounts, as a percentage of total company wage and salaries charged to customer and corporate operations, and plant nonspecific expense accounts. It does not explain, however, what the cost causative relationship is between these wages and salaries and the "common" cost pools in each account. GTOC must amend its manual to explain this relationship. Additionally, in the reference section for this account, GTOC refers to a "Runzheimer Plan." GTOC must explain the "Runzheimer Plan."

Account 2113 - Aircraft and Account 6113 - Aircraft Expense

41. In its manual, GTOC proposes to allocate the one cost pool in each of these accounts to regulated and nonregulated operations based on the "support operations wages and salaries" ratio. We believe GTOC can use specific records or logs to allocate the costs of this account. We therefore require it to develop a different allocation mechanism or to justify why "support operations wages and salaries" are a better allocation factor.

Account 2114 - Special Purpose Vehicles and Account 6114 - Special Purpose Vehicle Expense

42. GTOC proposes to attribute indirectly the one cost pool in each of these accounts on the basis of the "relative value of outside plant investment," which it describes as the total nonregulated investment in outside plant (both directly assigned and allocated) as a percentage of total company investment in outside plant. GTOC states in its manual that since it will not share network plant (central office equipment and outside plant) for regulated and nonregulated services, all nonregulated investment in network plant will be directly assigned to nonregulated operations. However, in this instance, GTOC indicates that some outside plant will be allocated. GTOC must explain this apparent discrepancy.

Account 2124 - General Purpose Computers and Account 6124 - General Purpose Computers Expense

43. GTOC will use the general allocator to allocate the "common general purpose computers" cost pools in these accounts. We believe that a more cost causative allocator can be found to allocate these cost pools, and will require GTOC to apply a more cost causative allocator or provide justification for its use of the general allocator.

Account 6112 - Motor Vehicle Expense

44. GTOC proposes that the one cost pool for this account be allocated on the basis of "support operations wages and salaries." Normally, we would expect the structure of the expense accounts cost pools to reflect the related plant account cost pools, but in this case they do not. GTOC must explain why its cost pool structure for this account does not parallel the related investment account. Additionally, GTOC must explain the cost causative relationship between "support operations wages and salaries" and the related cost pool.

Account 6116 - Other Work Equipment Expense

45. In its manual, GTOC has proposed one cost pool for this account, rather than the three used in the related investment account (regulated, common and nonregulated). We direct GTOC to explain why its cost pool structure for this account does not conform to the "Other Work Equipment" investment account. In addition, GTOC should explain the cost causative relationship between "support operations salaries and wages" and this account.

Account 6121 - Land and Building Expense

46. GTOC will have two cost pools for this account (common and nonregulated) and four cost pools in the related investment accounts (central office equipment, other regulated, multi-use, and nonregulated). While the "common" or "multi-use" cost pools in the investment accounts are allocated based on "plant and support operations wages and salaries," the "common" cost pool in this account is allocated on the basis of "relative value in land and buildings." GTOC should explain this apparent discrepancy. Additionally, we direct GTOC to develop a cost pool for "operating rents," to be directly assigned or attributed to regulated and nonregulated based on an analysis of the relative use of the rented asset. Finally, GTOC should explain why the cost pools in the related investment accounts are not reflected in this account.

Account 6122 - Furniture and Artwork Expense and Account 6123 - Office Equipment Expense

47. GTOC proposes two cost pools for these accounts (common and nonregulated), rather than three as in the related investment accounts, which included a regulated investment cost pool. Additionally, the "common" cost pools for these accounts are allocated based on "relative value" of furniture or office equipment, while in the related investment accounts, the "common" cost pools are allocated based on the "support operations wages and salaries" ratio. We direct GTOC to justify why the cost pools in this account do not parallel the cost pool structure in the related investment accounts and why the allocation methodologies differ. Additionally, it must explain the cost causative relationship between the "support operations wages and salaries" ratio and the cost pools to which it is applied.

Account 6512 - Provisioning Expense

48. In its manual, GTOC proposes two cost pools for this account, "common provisioning" and "nonregulated (inventory adjustment)." It has no cost pool for regulated activities, and it allocates the "common provisioning" pool on the basis of "support operations salaries and wages." GTOC must explain why its manual does not include a cost pool for regulated activities. Moreover, GTOC is directed to explain the cost causative relationship between "support operations wages and salaries" and the "common provisioning" cost pool.

Account 6534 - Plant Operations Administrative Expense and Account 6535 - Engineering Expense

49. GTOC apportions costs to two pools in each of these accounts based on an "analysis of training," which it states "is an annual review of course content and related benefit to regulated, common and nonregulated cost pools." GTOC must justify the use of this apportionment procedure for this account, and define in detail how its "analysis of training" is conducted. Additionally, GTOC must clarify whether construction-related costs are cleared from these accounts before the allocation between regulated and nonregulated activites.

Account 6611 - Product Management Expense and Account 6612 - Sales Expense

50. GTOC proposes to have three cost pools for each of these accounts: one for "regulated," one for "nonregulated," and one for "common." While the first two cost pools are directly assigned, the "common" pool is allocated based on a "product management" or "sales" allocator. These allocators are defined as "the total nonregulated product management or sales costs directly assigned to nonregulated categories, as a percentage of total product management or sales costs directly assigned to regulated and nonregulated categories." We require GTOC to justify its proposals to use these allocators and to explain why more cost causative allocation methods, such as time reporting should not be employed.

Account 6613 - Product Advertising Expense

51. In addition to "regulated" and "nonregulated" cost pools for this account, GTOC proposes to use a "national advertising" cost pool to be allocated based on the marketing allocator, and a "common product advertising - other" cost pool to be allocated based on a "product advertising allocator." GTOC defines this latter allocator as based on the total nonregulated product advertising costs directly assigned to nonregulated categories, as a percentage of total product advertising costs directly assigned to regulated and nonregulated categories. GTOC must justify its proposals to use both of these allocators, and explain why a more cost causative methodology should not be used.

Account 6623 - Customer Service Expense

52. GTOC divides its customer service costs into several cost pools and allocates those pools on diverse bases. The pools are either directly assigned to regulated or nonregulated operations, or allocated using a variety of mechanisms, such as "billing units," "customer service allocator," "service order allocator," and "relative value: public telephone terminal equipment." GTOC must justify its proposed allocators or adopt a more cost causative methodology.

Account 6711 - Executive Expense and Account 6712 - Planning Expense

53. GTOC proposes to use the general allocator to apportion these accounts. GTOC must attempt to assign or attribute these costs either directly or indirectly before employing the general allocator. In the *Joint Cost Order*, the Commission created a hierarchy of allocation mechanisms that employs the general allocator only if costs cannot be assigned or attributed on some cost causative basis. We believe that a substantial portion of this account can be assigned or attributed.

Account 6721 - Accounting and Finance Expense

54. GTOC will allocate the "common accounting and finance" cost pool in this account by using the general allocator. GTOC must amend its manual to provide for a more cost causative allocator, or justify why it must resort to the general allocator to allocate this cost pool.

Account 6722 - External Relations Expense

55. GTOC has four cost pools for this account. The "regulatory and connecting company relations" cost pool is directly assigned to regulated activities, and the "nonregulated external relations" cost pool is directly assigned to nonregulated activities. The "other external relations" cost pool is allocated using the general allocator and the "corporate image/public service advertising" is allocated using the marketing allocator. We require only one change. GTOC should allocate some portion of the "regulatory and connecting company relations" cost pool to nonregulated activities to reflect its contact with regulatory authorities concerning nonregulated services.

Account 6724 - Information Management Expense

56. GTOC proposes to allocate the "common information management" cost pool in this account by use of the general allocator. GTOC must amend its manual to provide for a more cost causative allocation methodology for this cost pool or explain in detail why it must resort to the general allocator.

Account 6725 - Legal Expenses

57. GTOC will apportion costs in this account to three cost pools – "regulated," "common," and "nonregulated" – and directly assign the regulated and nonregulated costs. It uses the general allocator to allocate common costs. These common costs include both direct legal expenses and overhead expenses, such as law library and general research costs. Since the overhead expenses support all of the GTOC activities for which direct legal expenses are incurred, GTOC shall divide its "common" cost pool into an "other" direct expense cost pool and an "overhead" cost pool. While we have no objection to use of the general allocator to allocate the "other" direct expense cost pool, GTOC shall allocate the "overhead" cost pool in the same proportion as its direct legal expenses are allocated.

Account 6726 - Procurement Expenses

58. GTOC has divided this account into three cost pools, "regulated," "nonregulated," and "common". The first two are directly assigned, while the third is allocated based on "support operations wages and salaries." We believe there should be a more cost causative allocator for the "common" cost pool in this account. GTOC must attempt to develop such an allocator or justify its current proposal.

Account 6728 - Other General and Administrative Expenses

59. GTOC proposes the use of the general allocator for four cost pools in this account. We believe that the general allocator is inappropriate for apportioning three of these pools (Corporate Operation Expense, General Security, and Insurance, Accidents and Damages) because it does not adequately reflect cost causational principles. In its revised manual, GTOC shall either specify more ac-

curate allocation methods for these cost pools or explain why assignment or direct or indirect attribution should not be prescribed.

Account 7150 - Gains and Losses From Disposition of Land and Artworks

60. GTOC has put the entire Account 7150, Gains and Losses From Disposition of Land and Artworks, into one cost pool. This account contains the gains and losses from assets disposed of in Account 2111 (Land) and Account 2122 (Furniture). Since GTOC was able to disaggregate Account 2111 and Account 2122 into at least three cost pools (regulated, common and nonregulated), it should be able to identify the cost pools where transactions in these accounts arise. It is appropriate, therefore, for GTOC to identify similar cost pools for Account 7150. We require GTOC to disaggregate Account 7150 into cost pools similar to the cost pools it uses for the associated assets (Account 2111 and Account 2122). It must revise its manual accordingly.

Account 7210 - Operating Investment Tax Credit - Net

61. GTOC allocates this account, Operating Investment Tax Credit - Net, between regulated and nonregulated activities using "Relative Value: Depreciable Assets." Investment Tax Credits arise from specific assets and can be directly identified with those assets. GTOC's method may in fact be accomplishing this direct identification, but its manual fails to provide an adequate explanation of the allocation method. We require GTOC to define "Relative Value: Depreciable Assets" and to justify its use in the allocation of investment tax credits. After obtaining this information, we can determine the propriety of GTOC's allocation method and express final approval or require further revision. GTOC must amend its manual to include both the definition of its allocation factor and justification for its use.

Account 7220 - Operating Federal Income Taxes, Account 7230 Operating State and Local Income Taxes, and Account 7250 - Provision for Deferred Operating Income Taxes

62. GTOC proposes to allocate the current income tax accounts on "the respective regulated and nonregulated revenues and expenses, and other applicable costs or credits." Deferred taxes would be allocated on either the "Relative Value: Depreciable Assets" or an "Analysis of Specific Items."

63. Applying different apportionment bases to any one or group of these accounts could result in assignments of these costs that are not consistent with the related book income. The net book taxes resulting from these accounts should reflect normalized taxes based on book income, since under the revised USOA, interperiod tax allocations are used for accounting purposes. Moreover, GTOC's proposal to use "regulated and nonregulated revenues and expenses" as an allocator is unexplained. If all three of these accounts are allocated based on a specifically-defined book income, the taxes apportioned should result in an appropriate distribution between regulated and nonregulated activities. By book income we mean operating book income before taxes and minus interest expense. Our proposed methodology ensures that the costs are being allocated in a straightforward manner, and better reflects the costs being allocated –income taxes. We direct GTOC to amend its manual accordingly.

IV. PROCEDURAL ISSUES

64. In this section we address a number of procedural issues affecting GTOC's cost allocation manual. These issues are: (a) the submission of a revised manual in compliance with this Order; (b) interim reporting and retention requirements; and (c) the routine submission of future amendments to the manual.

65. *Revised manual.* We have required GTOC to submit extensive amendments clarifying and changing many of its cost pool apportionment and cost allocation procedures. We have also directed GTOC to submit additional information concerning its affiliate transactions, nonregulated activities, incidental activities, and time reporting mechanisms. In many cases, the additional information requested is needed to form a judgment concerning the reasonableness of GTOC proposed methods. In the *Joint Cost Order*, the Commission specifically provided for public comment on the manuals so that a determination on their compliance with Commission requirements would be based on a full record and so that the cost allocation methodologies would be exposed to public scrutiny prior to their implementation.[73] Similarly, we believe that our review of GTOC's amendments will be aided by public comment on the revisions.

66. We will evaluate the proposed revisions, as well as the comments that we receive, before issuing an order approving or disapproving the amendments. If we disapprove a proposed revision, we shall take whatever further action is required, including mandating specific allocation methodologies or other procedures, consistent with our delegated authority to implement cost allocation manuals. All revisions that are approved or ordered shall be made retroactive to January 1, 1988. In addition, to facilitate our review of the updated manual and its availability to the public, GTOC must file two updated copies of its revised manual with the Commission in looseleaf form with numbered and dated pages, within 60 days of the release date of this Order.[74] When amendments are submitted, each revised page must clearly indicate the word "REVISED" and the date next to the page number. All amended language must be indicated by a vertical line in the right margin of the page.

67. *Interim reporting and record retention.* The *Joint Cost Order* directed us to develop interim reporting and record retention requirements, pending the final resolution of these issues in the *Automated Reporting Requirements Order*. [75] In that proceeding, the Commission delegated to us the authority to determine the parameters of the data to be filed concerning the separation of joint and common costs.[76] The Commission also specified that the first report containing the results of the implementation of the cost manuals would be filed on June 30, 1988, covering the period of January 1, 1988 to March 31, 1988.[77] The Commission directed us to finalize our reporting standards prior to that date. Given that reporting will begin within months of the release of this Order, we decline to issue interim reporting formats. We believe our resources are better devoted to assuring that the permanent reporting requirements are properly designed and implemented. Any misallocations that may be detected can be corrected at that time.

68. We require that GTOC retain, on an interim basis, all of its accounting records together with any calculations necessary to perform cost allocations that will be necessary to report cost allocations to the Commission. For the interim, records must be maintained at a cost pool level.

69. *Routine amendments*. In addition to reporting and recordkeeping requirements, we also must resolve the larger issue of the procedures GTOC will be required to follow when updating its cost allocation manual. We conclude that GTOC will be subject to the same requirements that we imposed on the BOCs.[78] As we have determined in the BOC context, we recognize that the accuracy of different sections of the manual will have different effects on our ability to monitor the cost allocation process. Therefore, we will apply the following requirements for the update of GTOC's manual. First, because it is very important for the Commission to obtain current information on the cost categories and how these are allocated between regulated and nonregulated activities, several categories of information require our attention before the manual is implemented. These are: (1) changes to the cost categories and their allocation mechanisms, including changes reflecting the introduction of enhanced services that require shared use of basic network switch investment; and (2) a change in the way employee time, including nonproductive time, is allocated. Each of these changes in the cost manuals must be submitted at least 60 days prior to implementation. Parties seeking to comment on the proposed amendments will be provided an opportunity to do so prior to implementation and will be notified by public notice of the comment dates. The proposed amendments to the manual will be deemed accepted unless the Bureau, pursuant to its delegated authority, rejects or stays the effectiveness of the change.[79]

70. Second, because other information, such as corporate structure, may not be quite as critical for cost allocation monitoring purposes, we require that GTOC file such changes in a timely manner.[80] A modification to a carrier's cost manual to reflect a corporate reorganization does not require our advance approval and, therefore, does not need to be filed prior to the corporate restructuring. Finally, all other changes to the manual should be submitted quarterly, on March 31, June 30, September 30 and December 31 of each year.

71. We believe that these procedures will ensure that the ongoing process of implementing cost allocations will continue to be conducted according to the requirements in the *Joint Cost Order*. At the same time, they minimize the number of times GTOC must seek prior Commission approval before implementing a change and provides a system to ensure timely review of GTOC's proposals.

V. ORDERING CLAUSES

72. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the Cost Allocation Manual filed by GTOC IS APPROVED, subject to the conditions noted in this Order.

73. IT IS FURTHER ORDERED that revised copies of the Cost Allocation Manual shall be submitted within 60 days from the release date of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock,
Chief, Common Carrier Bureau

FOOTNOTES

[1] The General Telephone Operating Companies are: General Telephone Company of California, General Telephone Company of Florida, GTE MTO Inc., General Telephone Company of the Northwest, Inc., General Telephone Company of the South, General Telephone Company of the Southwest, and Hawaiian Telephone Company.

[2] Separation of costs of regulated telephone service from costs of nonregulated activities, *Report and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Reconsideration Order*), *petitions for further recon. pending.*

[3] 51 Fed. Reg. 43498 (Dec. 2, 1986), *to be codified at* 47 C.F.R. Part 32.

[4] Comments were filed by: International Business Machines Corporation (IBM); MCI Telecommunications Corporation (MCI); and Office of the Consumers' Counsel, the State of Ohio (Ohio).

[5] *Joint Cost Order*, 2 FCC Rcd at 1327.

[6] *Id.* at 1328. The *Joint Cost Order* uses the term "cost categories" to describe groupings of costs that are homogeneous in nature for cost allocation purposes. The accounting profession's term for "cost categories" is "cost pools." We will use the two terms interchangeably in this Order.

[7] *Id.* at 1321-22.

[8] MCI Comments at 2 and Ohio Comments at 3.

[9] MCI Comments at 2.

[10] Ohio Comments at 3.

[11] GTOC Reply at 3.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 4.

[15] *Id.*

[16] *See* Section IV, *infra*. If the additional material we are requesting is insufficient to permit us to determine whether the cost apportionment or cost allocation methods meet Commission requirements, we will order GTOC to adopt a methodology of our own choosing, pursuant to our delegated authority to implement the manuals.

[17] GTOC Manual at Section 3.

[18] *Joint Cost Order*, 2 FCC Rcd at 1308.

[19] *Id.*

[20] GTOC Manual at Section 4.

[21] *Joint Cost Order*, 2 FCC Rcd at 1328.

[22] GTOC Manual at 4-1, 4-2.

[23] Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 433, 436 (1988) (*Ameritech Order*).

[24] GTOC Manual at 4-2, 4-3.

[25] *Id.* at 4-2.

[26] U S West's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 195 (1988) (*U S West Order*).

[27] *Id.* at 197-98.

[28] *See Joint Cost Order*, 2 FCC Rcd at 1355 and *Reconsideration Order*, 2 FCC Rcd at 6295. Carriers must value services at the prevailing price, if the service is generally available to the public.

If it is not generally available, carriers must allocate the cost of the service pursuant to the cost allocation standards of Section 64.901 of the Commission's Rules. For assets, carriers must record transactions at the prevailing price, if one exists. If not, carriers must record assets transferred from the affiliate to the carrier at the lower of net book cost and fair market value, while assets transferred from the carrier to the affiliate will be recorded at the higher of net book cost or fair market value. *Joint Cost Order*, 2 FCC Rcd at 1343, 1345, *amended by Reconsideration Order*, 2 FCC Rcd at 6308-09.

[29] *Joint Cost Order*, 2 FCC Rcd at 1328.

[30] *See* GTOC Manual at 6-1.

[31] *Id.* at Section 6, Exhibit I, page 1.

[32] *See id.*

[33] *U S West Order*, 3 FCC Rcd at 198-199.

[34] *Id.*

[35] GTOC Manual at 6-1.

[36] The affiliated companies affected by market rate transactions are: Fujitsu GTE Business Systems, Incorporated; GTE Communications Systems Corporation; GTE Consumer Communications Products Corporation; GTE Data Services Incorporated; GTE Directories Corporation; GTE Finance Corporation; GTE Laboratories Incorporated; GTE Mobilnet Incorporated; GTE Products Corporation (Delaware); GTE Realty Corporation; GTE TeleMessager Incorporated; GTE Ventures Corporation; Sylvania Lighting Services Corporation; US Sprint Communications Company; Various GTOCs Nonregulated Operations; and GTE Leasing Corporation. *See id.* at Section 6.

[37] Joint Cost Order, 2 FCC Rcd at 1321-22.

[38] GTOC Manual at Section 8-2(B).

[39] *Id.*

[40] Joint Cost Order, 2 FCC Rcd at 1319.

[41] Reconsideration Order, 2 FCC Rcd at 6288.

[42] GTOC Manual at Section 2, p. 2-3.

[43] *Id.*

[44] MCI Comments at 8-10.

[45] *Id.*

[46] Ohio Comments at 3.

[47] IBM Comments at 4, n. 4.

[48] GTOC Reply at 8.

[49] *Id.* at 10-13.

[50] This is consistent with our requirement that Bell Atlantic amend its manual to eliminate hypothetical allocations for shared use of network plant that does not exist. See Bell Atlantic Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 109, 116 (1988).

[51] Ohio Comments at 3.

[52] GTOC Reply at 8.

[53] *Id.* at 9.

[54] *Id.*

[55] Joint Cost Order, 2 FCC Rcd at 1298, 1331.

[56] GTOC Manual, Section 7.1-7.5.

[57] *Id.* at Table 7. All changes that we order to the cost allocation of USOA acounts should be reflected in amendments to both the narrative and the table, where applicable.

[58] MCI Comments at 4.

[59] *Id.* at 4-5.

[60] *Id.*

[61] *Id.*

[62] GTOC Reply at 5.

[63] *Id.* at 6.

[64] *Id.*

[65] *Id.* at 6-7.

[66] Joint Cost Order, 2 FCC Rcd at 1328.

[67] Automated Reporting Requirements for Certain Class A and Tier I Telephone Companies, Report and Order, 2 FCC Rcd 5770, 5775 (1987), petitions for reconsideration pending.

[68] Carriers must include these accounts in future releases of Automated Reporting Requirements reporting formats.

[69] MCI Comments at 9.

[70] *Id.*

[71] GTOC Reply at 7.

[72] *Id.*

[73] We require GTOC to serve copies of its revised manual on all parties to the GTOC manual proceeding.

[74] One copy will be available in the Accounting and Audits Division reference room, while the other will be maintained for staff use.

[75] Joint Cost Order, 2 FCC Rcd at 1328-29.

[76] Automated Reporting Requirements Order, 2 FCC Rcd at 5775.

[77] In the Orders approving the BOCs' cost allocation manuals, the filing date for the first report was erroneously referred to as June 1, 1988.

[78] *See, e.g.*, Ameritech Order, 3 FCC Rcd 433, 444 (1988).

[79] A stay of the effectiveness of a proposed change will not extend beyond 180 days.

[80] Of course, changes to corporate structure that also affect cost categories need to be filed in advance of implementation, as discussed supra.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

A Closed Circuit Test of the National-Level Interconnecting Systems and Facilities and Program Origination Channels of the Emergency Broadcast System.

ORDER

Adopted: May 20, 1988; Released: June 6, 1988

By the Managing Director:

1. The Commission has received a request from the Federal Emergency Management Agency and the White House Communications Agency to conduct a Closed Circuit Test of the National-Level interconnecting systems and facilities of the Emergency Broadcast System (EBS) during the week of June 20, 1988.

2. This request has been coordinated with the major radio networks by Mr. Paul Hill of Mutual Broadcasting System (MBS).

3. Coordinated arrangements have been made with the White House Communications Agency, the Federal Emergency Management Agency, the major Radio Broadcast Networks (ABC, AP Radio, CBS, MBS, NBC, NPR, United Stations and UPI Audio) and the American Telephone and Telegraph Company (AT&T).

4. Accordingly, pursuant to authority delegated to the Managing Director in his capacity as Defense Director, IT IS ORDERED that a Closed Circuit Test of the EBS be conducted during the week of **June 20, 1988,** in accordance with Section 73.962 of the Rules.

5. Authority for the adoption of this action is contained in Section 1, 4(i), 4(o), and 303(r) of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION

Edward J. Minkel
Managing Director

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-34

In re Applications of

HISPANIC KEYS BROADCASTING CORPORATION	File No. BPCT-850917KF
ERNEST A. VENDRELL	File No. BPCT-850918KE
CONSTANCE J. WODLINGER	File No. BPCT-850920KE

For Construction Permit
for a New Television Station
Key West, Florida

Appearances

Rainer K. Kraus and *Peter M. Connolly*, on behalf of Hispanic Keys Broadcasting Corporation; *John R. Wilner* and *Chase C. Libbey*, on behalf of Ernest A. Vendrell; and *Michael R. Miller*, on behalf of Constance J. Wodlinger.

DECISION

Adopted: April 29, 1988; Released: June 6, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL.

1. Following a trial type comparative hearing for a new television station to operate on Channel 8, Key West, Florida, Hispanic Keys Broadcasting Corp. was found to be "the obvious winner." *See* Initial Decision of Administrative Law Judge Frysiak, 2 FCC Rcd 6255, 6259 (1987). All three remaining applicants have filed briefs and exceptions, and oral argument was held on February 12, 1988. The Board will affirm the Initial Decision, because its findings accurately reflect the record evidence, and its conclusions are supported by past and recent precedent discussed below.

2. *Background* : Hispanic Keys was awarded 100% credit for participation of ownership in the management of the station. ID paras. 49-54. This credit was enhanced because Charles P. Curry, Jr., a 50% owner, was born in Key West in 1930, has resided there for most of his life, and has engaged in many civic activities in the area since 1973. Charles Curry also received minority enhancement credit because his mother was born in Cuba in 1906, and was a Cuban citizen at that time. ID paras. 10-11, 55. C. Michael Curry, Charles' son, owns the remaining 50% of the stock, and proposes to participate in the management of the station. C. Michael Curry did not claim any credit for local residence, or civic activities, but did claim Hispanic minority credit because of his paternal grandmother's Cuban background. ID paras. 12-14. In essence, the ALJ held that Hispanic's 100% credit for ownership participation in management, enhanced by 50% credit for both past local residence and civic activities, and 100% minority ownership credit, was superior to Ernest Vendrell's 100% ownership participation credit enhanced solely by his 100% minority ownership credit. ID para. 62. Wodlinger finished out of the picture in the ALJ's analysis, after receiving a moderate diversification demerit because of numerous other broadcast interests, ID para. 48, and no credit for participation of ownership in the management of the proposed station. ID para. 62.

3. *Discussion* : At the hearing the competing applicants urged that Hispanic Keys should not be awarded 100% ownership participation credit because, by the "B" cut-off date, its two owners had not issued any corporate stock or signed any stock subscription agreements. After reviewing contemporaneous documentary evidence, and oral testimony, ID paras. 7-8, 52- 53, the ALJ concluded that:

> In light of the foregoing documentation and having observed and assessed the demeanor of both Hispanic Keys principals under oath at the hearing, the Presiding Judge is convinced that the failure on the part of Hispanic Keys' officers to execute the stock certificates was an inadvertent oversight. Hispanic Keys is family corporation made up of only two stockholders--a father and a son. Though the Currys failed to observe some corporate formalities, as family business memberships are wont to do, there can be no serious doubt that, based on their overall behavior, the Currys intended to act at all stages of the proceeding as they initially proposed. Their failure to sign the stock certificates on August 1, 1985 or at any time before the "B" cut-off date does not belie their intention to carry out Hispanic Keys integration proposal. To hold otherwise would be to elevate form over substance.

ID para. 54. Only Wodlinger has filed exceptions to this conclusion, but that exception does not point to any record evidence which undermines the ALJ's findings. *See* Wodlinger Br. at 2-3. Moreover, Wodlinger does not cite any authority which contradicts the ALJ's legal conclusion; on the contrary, she fails to cite or discuss *Pacific Television, Ltd.*, 2 FCC Rcd 1101 (Rev. Bd. 1987), the case closest to the present factual situation, and on which the ALJ relied. *See* ID para. 51. We will therefore deny the exception to the ALJ's resolution of this issue, which is also supported by the Commission's recent affirmance in *Pacific Television, Ltd.*, FCC 88-116, released March 24, 1988.

4. The other losing applicant, Vendrell, does not join Wodlinger in the above exception. For the first time, on appeal, Vendrell relies on some additional documents which were belatedly tendered by Hispanic and rejected by the ALJ, after Vendrell objected to the record being reopened to receive the additional documents into evidence. Tr. 434-439. At oral argument before the Board, both Vendrell and Hispanic urged that the Board consider those documents, and not base its decision on any procedural faults.

5. According to Vendrell, those documents demonstrate that Elizabeth Curry, Charles' wife, is authorized to sign checks on the corporation's bank account, and that Scott

Curry, Charles' other son, is the registered agent of the corporation. Vendrell argues that: "the Curry *family* -- not just Charles and Michael -- function on behalf of the corporation and that family members who will *not* be working at the station are empowered to disburse funds and receive all official communications from the State . . . ." Vendrell Br. at 8 (emphasis in original). Thus, Vendrell contends, Hispanic Keys has departed from its integration scheme and, therefore, its proposal, in accordance with *Houston Family Television, Ltd.*, 101 FCC 2d 611 (Rev. Bd. 1985), should not be credited. Vendrell Br. at 8-9. Hispanic responds: "That other family members may also play some role in the proposed television operation has no logical bearing on the integration showing made by Charles and Michael Curry. No claim is made that Mrs. Curry or her son Scott has, or has ever had, any ownership interest in the applicant and it is totally insignificant whether one or both of them devotes any time to the venture -- either as a mail drop or a check signer." Hispanic Keys Reply at Br. 4.

6. Vendrell's argument is lacking in substance and is not supported by *Houston Family Television*. As the Board has previously explained, "in *Houston* the applicant tried to establish its ownership proposal with documents manufactured long after the crucial comparative date. In fact, the suspect documents were prepared, *post litem motam*, after litigation had commenced." *Pacific Television, supra*, 2 FCC Rcd at 1104. Here, additional contemporaneous documents were voluntarily produced by Hispanic at the end of the hearing. Thus, there was no attempt to conceal any real party in interest. Compare *Susan S. Mulkey*, FCC Rcd 590 (Rev. Bd. 1988), *Erratum*, 3 FCC Rcd 829. These documents do not change the ownership structure of the corporation credited by the ALJ. Nor do the documents, which establish the functions to be performed by the wife and other son, constitute convincing evidence of a "sham" proposal or establish that they "in fact will exercise influence or control over the ongoing business." *See Victory Media, Inc.*, FCC 88-134, released April 12, 1988, at para. 18. Thus, consistent with our decision in *Pacific Television, supra*, and the Commission's recent decisions in *Pacific Television* and *Victory Media, supra*, we reaffirm the ALJ's award of full 100% ownership integration credit to Hispanic Keys.

7. Two remaining exceptions by Vendrell are even less worthy. First is the claim that Charles Curry is not entitled to full integration credit because he will engage in substantial sales activities outside the station's offices. Vendrell Br. at 9-11. This argument completely ignores the principles and policies fully discussed in *Debra D. Carrigan*, 100 FCC 2d 721, 738 (Rev. Bd. 1985), which support the ALJ's award of full credit to Curry.

8. Finally, Vendrell maintains that the ALJ erred in awarding the Currys' 100% minority ownership credit because neither "is Hispanic under the criteria governing the determination of minority status applicable in comparative licensing proceedings." Vendrell Br. at 11-14. We will not disturb the ALJ's resolution of this matter because he properly applied *KIST Corp.*, 99 FCC 2d 173, 193, 195 (Rev. Bd. 1984), *modified on other grounds* 102 FCC 2d 288, 293 (1985), which neither the ALJ nor Board is free to ignore absent further Commission guidance. Also, we agree with Hispanic that it satisfied the *KIST* requirements because of the "undisputed testimony that Charles P. Curry's mother was born in Cuba. He is thus one half Hispanic. And C. Michael Curry is thus one quarter Hispanic, the same percentage found acceptable in *KIST*. Further, unlike the person in *KIST*, Charles P. Curry is known in his community as a man of Hispanic heritage (Tr. 87-89) and belongs to Key West's Spanish speaking Masonic Lodge and Latin American Chamber of Commerce (Key West Exhibit 1, p. 2). Therefore, under the principles set forth in *KIST*, Hispanic Keys is obviously entitled to an enhancement for minority status." Hispanic Keys Br. at 8. Finally, the Communications Amendments Act of 1982, PL 97-259, on which Vendrell relies, is applicable to lottery selection procedures only, and does not modify the Commission policies and precedents applicable to the present comparative hearing. We therefore affirm the ALJ's award of 100% minority ownership enhancement credit to Hispanic.

9. In sum, we have affirmed the award to Hispanic of 100% full-time ownership credit enhanced by 50% credit for both local residence and civic participation and by 100% minority ownership credit. Vendrell, which lacks any enhancement credit for local residence or civic participation, is a solid second. And, Wodlinger finishes a distant third because of its serious diversification demerit[1] and total absence of full-time ownership participation credit.

10. ACCORDINGLY, IT IS ORDERED, That the petition for leave to amend filed on March 11, 1988 by Constance J. Wodlinger IS GRANTED, and the amendment IS ACCEPTED; and

11. IT IS FURTHER ORDERED, That the application of Hispanic Keys Broadcasting Corporation (File No. BPCT-850917KF) to establish a new television station at Key West, Florida IS GRANTED, and the applications of Ernest A. Vendrell (File No. BPCT-850918KE) and Constance J. Wodlinger (File No. BPCT-850920KE) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTE

[1] Wodlinger's diversification demerit is based on her attributable ownership interests in several broadcast stations, including two stations located in Florida. *See* I.D. paras. 46-48. Because of these other broadcast station ownership interests, we need not dwell on the diversification impact, if any, of her ownership interest in the "Hit Video U.S.A." television programming service.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-559

In re Applications of

CORYDON BROADCASTERS LIMITED	File No. BPH-860221MN
HARRISON COUNTY BROADCASTING CO.	File No. BPH-860221MT

For Construction Permit for a New FM Broadcast Station at Corydon, Indiana

MEMORANDUM OPINION AND ORDER

Adopted: May 4, 1988; Released: June 6, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. The Review Board has under consideration an appeal filed March 15, 1988 by Lopez Radio, Inc. (Lopez) from the presiding judge's *Memorandum Opinion and Order*, FCC 88M-622, released March 7, 1988, which denied its petitions to enlarge issues, and a related *Order*, FCC 88M-625, released March 7, 1988, which dismissed its extension of time request. Lopez contends that these actions effectively denied it a ruling on its petition to intervene in this proceeding.

2. Lopez filed an application in this proceeding which was returned to it because it violated the spacing requirements found in 47 CFR 73.207 and the antenna height maximums set forth in 47 CFR 73.211(b). In the *Hearing Designation Order*, DA 87-1800, released December 29, 1987, Lopez's petition for reconsideration of its dismissal was denied. Lopez then filed on February 3, 1988 a petition to intervene and petitions to enlarge against two of the other applicants herein. The judge denied the intervention request by *Memorandum Opinion and Order*, FCC 88M-538, released February 26, 1988, because Lopez had not satisfied 47 CFR 1.223, which governs party intervention, and thereafter denied Lopez's issue enlargement requests because Lopez, a non-party, lacked standing. For the same reason, the ALJ dismissed as moot Lopez's extension of time request. *See* para. 1, *supra*. Lopez now appeals to the Board on the grounds that its intervention and enlargement requests were timely filed, that its intervention request relates to the issues it wishes to have added, and that the ALJ's ruling denying its enlargement petitions frustrates its ability to demonstrate that it should be allowed to intervene on the basis of the requested issues, and thus effectively denies its request to intervene without consideration.

3. We will deny Lopez's appeal. First and foremost, the ALJ correctly considered Lopez's intervention request deficient under 47 CFR 1.223 because the former applicant failed to show how its participation would assist the Commission in the determination of the issues in question pursuant to part (b) of that rule. *See Denton FM Radio, Ltd.*, 56 RR 2d 171 (Rev. Bd. 1984). That Lopez's request may have been timely filed did not relieve it of this requirement. Furthermore, Lopez has referred us to no Commission authority whatever to support its proposition that it should have been permitted to intervene not on the basis of matters currently in issue, as the rule appears to literally require, but in order to explore issues requested but yet to be added. In addition, as the ALJ correctly held, once its intervention request was denied, Lopez had no standing to seek issue enlargement because 47 CFR 1.229, which governs motions to enlarge, specifies that only parties to the hearing may file such requests. And finally, while Lopez notes that on January 29, 1988 it filed another petition for reconsideration of the dismissal of its application, it is well settled, as the ALJ also held, that Lopez's status as a former applicant appealing its dismissal does not in and of itself confer standing to intervene. *See Kenneth J. Crosthwait*, 79 FCC 2d 191, 194 (1980).[1]

4. ACCORDINGLY, IT IS ORDERED, That the appeal filed March 15, 1988 by Lopez Radio, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTE

[1] Insofar as Lopez may possess relevant and material information regarding the qualifications of the remaining applicants, 47 CFR 1.225(b) specifically provides for the presentation of such evidence at hearing by a non-party. *See GAF Broadcasting Co., Inc.*, 54 RR 2d 159 (Rev. Bd. 1983). In this regard, the ALJ, in denying Lopez's petitions to enlarge, also noted that "any information Lopez has regarding Commission Rules violations may be referred to the Hearing Division of the Mass Media Bureau." FCC 88M-622, *supra*, at para. 3. *See also De Beau Broadcasting, Inc.*, FCC 85R-35, released April 26, 1985 (Order denying intervention notes that other parties "are presumably capable of developing a full record" under issue in question.)

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Harriscope of Chicago, Inc., *et al.* a Joint Venture, d/b/a VIDEO 44	**MM DOCKET NO. 83-575** File No. BRCT-820802J9

For Renewal of License of
Station WSNS-TV, Channel 44,
Chicago, Illinois

and

MONROE COMMUNICATIONS CORPORATION Chicago, Illinois	**MM DOCKET NO. 83-576** File No. BPCT-821101KH

For a Construction Permit

Appearances

Stanley S. Neustadt, *Stanley B. Cohen*, and *Brian M. Madden* on behalf of Harriscope of Chicago, Inc., et al. a Joint Venture, d/b/a Video 44; *Gene A. Bechtel*, *Harry F. Cole*, and *Shelley Sadowsky*, on behalf of Monroe Communications Corporation; and *Norman Goldstein*, *Brian Kilbane*, and *Larry A. Miller*, on behalf of the Chief, Mass Media Bureau, Federal Communications Commission.

DECISION

Adopted: May 12, 1988; Released: June 6, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN[1]

Board Chairman MARINO:

1. This is a two-party comparative case to select a licensee for UHF television Channel 44 in Chicago, Illinois. An oral argument was held on August 23, 1985, but final resolution of this case has been delayed because of several interlocutory actions. On September 5, 1985 the Board remanded a factual issue for further hearing, and certified a policy issue to the Commission for further guidance. *See Video 44*, 102 FCC 2d 408 (Rev. Bd. 1985)(*Certification Order*). On April 16, 1986, the Commission responded to the certification request, but reversed the Board's September 5 order. *Video 44*, 103 FCC 2d 1204 (1986). Finally, on January 22, 1988, the Commission modified its April 1986 order, and indicated that the remaining issue before the Board is "whether Video 44 is entitled to a renewal expectancy for its past programming record." *Video 44*, 3 FCC Rcd 757, 760 (1988). *See also In re : Monroe Communications Corp.*, 840 F.2d 942 (D.C. Cir. 1988). In his Initial Decision, 102 FCC 2d 419 (1985) (*I. D.*), the Administrative Law Judge (ALJ) concluded that Video 44 "toward the end of its license term . . . rendered a minimal service and is not deserving of a renewal preference." *Id.* at 458. Finding that when the entirety of the station's subject license term performance is properly considered, as required by Commission precedent, Video 44 is entitled to a renewal expectancy which outweighs Monroe's comparative promise, we reverse the I.D., renew the license of Video 44, and deny the competing application of Monroe Communications Corp.

2. *General Background:* It is now well-settled by both Commission and Court cases that if a broadcast renewal applicant has provided "meritorious" or "substantial" service it is entitled to a legitimate renewal expectancy and can be reasonably confident of renewal. *Cowles Broadcasting, Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom. Central Florida Enterprises, Inc.* v. *FCC*, 683 F.2d 503 (D.C. Cir. 1982); *Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc.* v. *FCC*, 722 F.2d 756 (D.C. Cir. 1983). Substantial service has been measured by such factors as licensee ascertainment of community needs and problems, licensee programming responsive to those ascertained needs and problems, including a quantitative and qualitative evaluation of its non-entertainment programming, as well as the extent of public support for, or objections to, the station's performance, and any record of violations of Commission rules or policies. *See, e. g., Pillar of Fire*, 99 FCC 2d 1256, 1259-1276 (Rev. Bd. 1984), *review denied*, 2 FCC Rcd 519 (1987).

3. The record in this proceeding reflects that, by the end of the license term under review, December 1979 - November 1982, Video 44 had evolved from a conventional UHF station featuring films, children's programming, sports and religious programs, as well as locally produced programs, to a full-time station operating in the subscription television (STV) mode.[2] Commencing on August 23, 1982, 163 out of a total of the station's 168 hours of weekly programming were provided on a subscription-only basis, and contained virtually no non-entertainment programming. *I.D.*, para. 26. After considerable colloquy at oral argument, the Board concluded that the question of the proper standard for determining the renewal expectancy of STV stations, as opposed to conventional broadcast stations, was one of first impression and we therefore certified the matter to the full Commission for its consideration. *Certification Order*, *supra*, 102 FCC 2d at 412-13. In response to our certification, the Commission held that "in evaluating whether an STV operator's past performance merits a renewal expectancy, the standards applied should be essentially the same for an STV operator as for a conventional licensee. We do not mean to suggest that any rigid formula should be mechanically applied in evaluating either conventional or STV operators. Rather, we mean only that the same underlying factors are relevant in either case." *Video 44*, *supra*, 103 FCC 2d at 1208.[3]

4. The basic facts regarding Video 44's past operation were accurately summarized in the Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law, filed May 4, 1984 (Bur. Fdgs.), most of which proposed findings were adopted verbatim by the ALJ in his *I.D.* In its analysis of the station's record, the Media Bureau considered Video 44's operation, both before and after the licensee became a full time STV station, in evaluating its possible entitlement to a renewal expectancy. The Bureau first noted that Video 44's 1979 renewal application had

proposed no news programming, 0.5% public affairs, and 24.1% "other" non-entertainment programming. Bur. Fdgs. at 20, 27. "Overall, for each of the years of the renewal period," the Bureau found that based upon the FCC prescribed "composite weeks, WSNS either met or exceeded its projections for news and public affairs." *Id.* at 27. During the license period, said the Media Bureau, the station's non-entertainment programming had demonstrated "a responsiveness to community needs and problems and a substantial fulfillment of the licensee's promises to the Commission." *Id.* at 30. At the same time, it was the Bureau's view that the licensee's performance during its full-time STV period, standing alone, would not warrant renewal expectancy." *Id.* at 31. "However, on balance since the licensee runs on its record during the *entire* license period, WSNS should be granted a renewal expectancy." *Id.* at 32 (emphasis added).

5. As we have noted, the ALJ adopted most of the Bureau's proposed findings of fact, but he rejected its recommendation that, in accordance with past practice, Video 44's entire three-year license term be considered in awarding a renewal expectancy. *I.D.*, para. 79. His *I.D.* emphasized the last 26 weeks of the license term, and particularly the final 13 weeks, as the most probative in evaluating the licensee's record. While recognizing that the Commission "normally" considers the entire license term, the ALJ concluded that "reliance on a shorter time period is not unique." In support of his unusual approach, the ALJ drew (or overdrew) certain inferences from the Commission's decision in *United Broadcasting Company, Inc.*, 100 FCC 2d 1574, 1581 (1985) (substantial performance occurring after more than one-third of license term had expired was most probative and supported award of renewal expectancy). But, the ALJ acknowledged that the short period of time on which he here based his decision - *i. e.*, only the final 13 - 26 weeks of the license term - was far shorter than the nearly two years deemed most probative in *United Broadcasting*. *See I.D.*, n. 25. Nevertheless, the ALJ felt this case to be "unique", thereby justifying the following unorthodox approach:

> In evaluating WSNS-TV's record, it is clear that the programming carried by WSNS-TV in the period following its decision to commence virtual wall-to-wall STV programming, rather than its overall programming during the entire license term, is the most reliable predictor of future service to the public.

I.D. at para. 79.

6. After opining that "[t]he record reflects no [local public] support for the program changes [after June of 1982] and considerable criticism of those changes by its viewers," *id.* at para. 78, the ALJ summarized his reasons for denying the station a renewal expectancy:

> WSNS-TV programming toward the end of its license term . . . rendered a minimal service and is not deserving of a renewal preference. Summarized briefly, WSNS-TV broadcast no news, no regular local programs, and effectively shut down its studios, telecast 4-5% non- entertainment programs and a drastically reduced PSA schedule at undesirable time periods - none in prime evening time. More important, the record reflects no support for its programming change and extensive criticism of that change by its viewers . . . . Unlike the facts in *United*, neither community witnesses or its regular viewers testified in favor of WSNS-TV's changed programming.

Id. at para. 80.

7. Before the Review Board, the Mass Media Bureau reversed course and now argues that the ALJ's conclusion is supported by *United Broadcasting*. *See* Mass Media Bureau Reply Exceptions at 6. Yet, during oral argument, the Media Bureau conceded that if its reliance on *United Broadcasting* were mistaken, then the Bureau would adhere to its *former* position that - taking the three year license term in its entirety - Video 44 *would be* entitled to a renewal expectancy. Tr. of Oral Arg. at 1397-1398. Thus, the first major question presented is whether the ALJ's approach is compelled by the *United Broadcasting* decision or any "unique" circumstances present in this case.

8. *Discussion*. The general practice in comparative renewal cases has been to focus primarily upon the entire license term immediately preceeding the filing of the renewal application in determining whether a licensee's past broadcast record warrants a renewal expectancy. *See, e.g., Cowles, supra ; Radio Station WABZ, Inc., supra; RKO General, Inc.*, 35 FCC 2d 100, 103 (1972); *Pillar of Fire, supra*. In *United Broadcasting Co., Inc.*, 94 FCC 2d 938 (Rev. Bd. 1983), the Board was presented with the following factual situation: the station's license in that case had last been renewed by the Commission in 1966, and the competing applications were filed some twelve years later in 1978. United there argued that its broadcast record for only the most recent license renewal term (1975-78), should be considered in ascertaining its entitlement to a renewal expectancy. The Review Board disagreed, holding that since United's license had not been renewed since 1966, its entire record (from 1966 to 1978) had to be considered in accordance with prior Commission practice. But, the Board indicated that the station's broadcast record for the *most recent license term* (*i. e.*, 1975-78) was certainly the *most* probative evidence of probable future performance. 94 FCC 2d at 950.

9. On appeal, the Commission first recognized that, ordinarily, a station in a comparative renewal case is judged on the immediately past license term. *United Broadcasting Co., supra*, 100 FCC 2d at 1577-1578. But, when United's license was deferred and not renewed in 1969: "United did not have notice that it later would be required to document its 1966-1975 record with respect to its programming. We will therefore focus on the years 1975-1978 in determining whether United merits a renewal expectancy." *Id.* at 1578. While reversing the Review Board's conclusion that the entire unreviewed period of 1966 to 1978 should be taken into account, the Commission did agree with the Board that the station's most recent (1975-1978) license term was most probative of future performance in that case. (The *United* Commission, however, also "examined, to the extent the record permits," that station's pre-1975 record, *see id.*)

10. Our *United Broadcasting* decision, even as slightly modified by the Commission, does not support the ALJ's unprecedented decision to place exclusive or undue reliance on the last 26 weeks (or, perforce, the last 13 weeks) of Video 44's entire license term performance. His ap-

proach, in effect, ignores more than five-sixths of the station's total licensed term. In *United Broadcasting*, while both the Commission and the Board concluded that the last two years of that station's license term were important, the record for the entire license term was fully considered. *See, e.g.*, 100 FCC 2d at 1579 and n. 17. Moreover, to the extent that the full licensee record was available, the *United Broadcasting* Commission also examined an additional prior decade of that particular station's past operation. Consequently, nothing in *United Broadcasting* supports the ALJ's cramped approach, as the ALJ himself noted. (Admittedly, the period considered here is shorter than that deemed probative in *United*. "*I.D.* at n. 25.) Nevertheless, he deemed certain aspects of Video 44's STV operation so "unique" as to justify his novel approach. We therefore consider those "unusual" elements to ascertain whether they support the ALJ's uncommon approach.

11. In analyzing the station's so-called public interest programming, the ALJ fell into "plain error as a matter of law" when he suggested that only locally produced programming could be considered responsive to Chicago's needs, problems, and interests, *see I.D.*, paras. 78, 80 and nn. 22, 23. In at least two recent decisions, we have held that institutional or syndicated programming can also be utilized by the licensee to respond to its community's needs. *See Pillar of Fire, supra*, 99 FCC 2d at 1265-1267; *Intercontinental Radio, Inc.*, 98 FCC 2d 608, 635 n. 70 (Rev. Bd. 1984), *modified*, 100 FCC 2d 817 (1985). These cases follow well-settled Commission policy. *See, e. g., National Broadcasting Co., Inc.*, 47 FCC 2d 803, 807 (1974); *Newton Broadcasting Corp.*, 56 FCC 2d 82, 89 (1975). Here, the licensee was downgraded by the ALJ for replacing its locally produced program *Dimensions* with an institutionally-produced program *Illinois Press*, and its locally produced *Coping* with a syndicated program, *Health Field*. However, the licensee made these changes after satisfying itself that those programs could satisfactorily substitute for the locally produced programs. *See infra* para. 20. Accordingly, Video 44 should not have been faulted for substituting institutional and syndicated non-entertainment programs for similar local programs.

12. Similarly, criticism that Video 44 broadcast no news was legally and factually flawed. As a matter of law, the broadcasting of local news (especially in a large urbanized area with many other stations satisfying that need) is not necessarily dispositive. *Pillar of Fire, supra*, 99 FCC 2d at 1264-1265 n. 19 (citing *Renewals of Certain D. C. Broadcast Stations*, 77 FCC 2d 899, 905-906 (1980)). As the Commission noted in *Renewals of Certain D. C. Broadcast Stations*, "we have never held that only locally produced material can satisfy local programming obligations." 77 FCC 2d at 906. Here, the licensee did not propose news programming in its 1979-1982 license application; nevertheless, Video 44 did experiment with *AM LaSalle Street*, a daily two-hour, business news program. *See infra* para. 20(c).

13. Video 44 responded to the criticism that, after it switched to full-time STV, it carried no local programs, reduced its PSA inserts, and shifted them to an undesirable hour. It claimed that, at the beginning of the subject license term, it broadcast approximately 8% local programs, and it continued to produce and broadcast public service announcements even *after* it commenced full-time STV operations. Video 44 Exceptions at 29. Over the entire license period under review here, the station devoted more than 4.3% of its total broadcasting time to local programming. *I. D.*, para. 57. After the station commenced STV operation, the licensee asserts that those programs were counter-scheduled at a time when, considering competing programs, they would be received by the greatest number of people interested in such programming. Video 44 Exceptions at 30 (citing Tr. 405-408).

14. A most crucial element in the ALJ's analysis was his general belief that the station's viewing audience did not support changes made in the station's conventional programming and opposed the switch to full-time STV programming toward the end of the term. This theme is repeated several times in the ALJ's conclusions. *See I.D.*, paras. 78-80. Our review of the underlying record does not support this sweeping generalization. The Commission, it is true, did receive 21 viewer complaints over the three-year license period, and the record reflects that 25% of the 83 letters in the station's public file were critical. However, the ALJ failed to balance this limited number of complaints against the fact that, at the close of the subject license term, 100,000 households had subscribed to pay for the station's programming. *See* Tr. 1131. According to the licensee, this represented "a level of public acceptance of the station virtually unparalleled during its history." Video 44 Exceptions at 32. On the whole, then, we cannot say that the few complaints received weigh heavily against the station's overall record.

15. Finally, the ALJ did acknowledge that this is a case of first impression involving the comparative renewal of a station which has recently evolved from a conventional to a full-time STV operation. *I.D.*, para. 81. Again, though, he failed to weigh into his analysis the fact that the Commission's expectations in this area - as evidenced by our *Certification Order* - were far from crystal clear at the time the licensee acted in August of 1982, and are still to this day evolving as the Court of Appeals recently noted. *See supra* notes 2 & 3. However, the instant record establishes that the licensee fully adhered to the Commission's rules as to the amount of conventional (unscrambled) programming that an STV operator was required to broadcast. Further, even after the Commission eliminated the requirement that STV operators broadcast 28 hours of conventional programming in the unscrambled mode, Video 44 continued to provide 5 hours per week of public service programming in the unscrambled mode, during the morning, commencing on August 23, 1982. *See I.D.*, paras. 26, 53; Video 44 Exh. 24; *see also* Bur. Fdgs. at 5-6.

16. In sum, none of the factors relied upon by the ALJ, individually or in combination, justify his unprecedented approach, which ignores the major portion of this licensee's past operation (more than 2-1/2 years) and focuses primary attention upon the last 13 to 26 weeks of the station's operation. Accordingly, we disagree with the ALJ that an evaluation of WSNS-TV's past programming record in the light of the Commission's *United Broadcasting* decision mandates the conclusion that its "virtual wall-to-wall STV programming [after August 23, 1982], rather than its overall programming during the entire license term, is the most reliable predictor of future service to the public," *I.D.*, at para. 79.

17. We now briefly review the legal standards which emerged in the 1980s for judging a renewal applicant's past broadcast record, before considering the actual record of Video 44's overall programming for the license term. As noted at the outset, applicable comparative renewal standards were finally established when the Court upheld the

Commission's decisions in *Cowles Broadcasting Inc.*, 86 FCC 2d 993 (1981), *aff'd sub nom. Central Florida Enterprises, Inc.* v. *FCC*, 683 F.2d 503 (D.C. Cir. 1982), and *Radio Station WABZ, Inc.*, 90 FCC 2d 818 (1982), *aff'd sub nom. Victor Broadcasting, Inc.* v. *FCC*, 722 F.2d 756 (D.C. Cir. 1983). *See also Broadcast Communications, Inc.*, 93 FCC 2d 1162 (Rev. Bd. 1983), *modified*, 97 FCC 2d 61 (1984), *aff'd by judgment sub nom. Genesis Broadcasting Ltd.* v. *FCC*, No. 84-1154 (D.C. Cir. filed March 29, 1985); and *Kaye - Smith Enterprises*, 98 FCC 2d 675, *recon.Denied*, 98 FCC 2d 670 (Rev. Bd. 1984), *rev.Denied*, FCC 85-192, released April 19, 1985, *aff'd by judgment sub nom. Hoffart Broadcasting* v. *FCC*, D.C. Cir. No. 85-1266, decided April 16, 1986.

18. A large body of administrative law has now developed applying the standards set out in *Cowles* and *Radio Station WABZ*. *See United Broadcasting Co., Inc.*, 94 FCC 2d 938 (Rev. Bd. 1983), *reversed*, 100 FCC 2d 1574 (1985); *Intercontinental Radio, Inc., supra* ; *Tele - Broadcasters of California, Inc.*, 58 RR 2d 223, 226-231 (Rev. Bd. 1985); *Pillar of Fire, supra*, 99 FCC 2d at 1259- 1276. As the (then Assistant) Chief Administrative Law Judge observed in *Kaye-Smith Enterprises, supra*, 98 FCC 2d at 683, "it is the Commission's practice in comparative renewal proceedings to accord primary significance to a station's past performance, and that a licensee who has rendered meritorious service can be reasonably confident of renewal." These cases establish that "a substantial record, sound, favorable and substantially above a level of mediocre service . . . gives rise to a renewal expectancy which in turn warrants a preference in comparative renewal proceedings." *Broadcast Communications, supra*, 93 FCC 2d at 1166. Among the elements of proof have been both quantitative and qualitative factors. "The prismic review of program performance customarily employed by the Commission offers a number of perspectives, some quantitative and some qualitative." *Pillar of Fire, supra*, 99 FCC 2d at 1261. Quantitative proof has included a comparison of an applicant's original promises versus actual performance and, when available, statistics comparing the performance of the renewal applicant and other similarly situated stations. Nevertheless, both the Commission and the courts have been disinclined "to gauge, in any controlling degree, a station's responsiveness by a quantitative standard." *Id.* For the principal ingredient of a licensee's obligation to operate a station in the public interest is still "the diligent, positive, and continuing effort by the licensee to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service." *WPIX, Inc.*, 68 FCC 2d 381, 400 (1978)(quoting *En Banc Programming Inquiry*, 44 FCC 2303, 2316 (1960)).

19. The more important qualitative performance elements have included an applicant's efforts to discover its community's needs, and how those ascertained needs have been met by news, public affairs and all other non- entertainment programs. *See, e.g., Intercontinental Radio, supra*, 98 FCC 2d at 631-636. But even here: "[m]ere percentages alone are a questionable means of determining a licensee's performance . . . . For as the Court noted in *Stone* v. *FCC*, 466 F.2d 316, 328 n. 44 (D.C. Cir. 1972), the needs of a broadcast station's audience 'includes a spectrum of events that range from newsworthy to purely aesthetic . . . the broad range of human activity that includes family, art and social interaction.'" *Kaye-Smith Enterprises, supra*, 98 FCC 2d at 684. Accordingly, a station's efforts to serve the community in any reasonable way as revealed by the community's response through community witnesses, awards, and other indicia have also been considered. *See, e.g., Victory Broadcasting v. FCC, supra*, 722 F.2d at 761-762.

20. The factual findings proposed by the Mass Media Bureau, and largely adopted in the Initial Decision, when reviewed in the light of the established legal standards, support the conclusion that Video 44's overall record for the full three year license term was substantial, meritorious and fully warranted a license renewal preference. Thus, the record establishes that the station's staff ascertained community needs and interests during 1980, 1981, and through July 1982. *I.D.*, para. 27; *see also* Bur. Fdgs. at 9. Locally produced or syndicated programs were regularly broadcast to meet community needs and interests. They included:

(a) *Dimensions*, a half hour interview program, addressed major community problems needs and interests which had been ascertained by the station's staff. It was broadcast from the beginning of the license period in December of 1979 and continued until June 4, 1982. *I.D.*, paras. 28-31; *see also* Bur. Fdgs. at 8-9. It was replaced by *Illinois Press*, a syndicated program produced by the University of Illinois at Champaign-Urbana. Using a format like "Meet the Press," this program considers political and social issues of importance to Illinois residents. A number of programs were of special relevance to Chicago and many of the panelists and guests were from the Chicago area. WSNS-TV first broadcast this program beginning on June 12, 1981 and continuing to the end of the license period. *I.D.*, paras. 28-31; *see also* Bur. Fdgs. at 8-9, 28.

(b) *Coping* was also a public affairs program locally produced for Video 44. It was concerned about health matters, an ascertained community concern, and was broadcast from December 3, 1979 until July 6, 1981. *I.D.*, paras. 32-33; *see also* Bur. Fdgs. at 9-10, 28. *Health Field* had originally been produced and broadcast by the NBC owned and operated stations and was broadcast from September 13, 1981 to the end of the license period. The program addressed many of the same issues as *Coping*. Topical health and medical subjects were examined through interviews of prominent physicians, health professionals, and other experts. *I.D.*, para. 34; *see also* Bur. Fdgs. at 10-11, 28.

(c) *Neighborhood Notes*, a series of public service announcements promoting local groups which ordinarily lacked access to publicity in the community, were produced until September 1981 by the station. At that point they were ended because the station felt that it was receiving sufficient public service announcements (PSA) without having to produce its own. *I.D.*, para. 37; *see also* Bur. Fdgs. at 13, 28-29. In its 1979 renewal application WSNS-TV had promised a minimum of 90 PSA's per broadcast week. With the exception of the period from September to November 1982, WSNS-TV exceeded its PSA commitment as to both local and non-local PSA's. *I.D.*, paras. 52-53; *see also* Bur. Fdgs. at 21-22. *AM LaSalle Street* was another locally produced two-hour long program that featured interviews and reports which included weather, sports and general

news information. An experiment by the station to see if it could develop a commercially successful business program, it was broadcast from June through October 1981. *I.D.*, para. 36; *see also* Bur. Fdgs. at 12-13, 27.

(d) *The 700 Club* was a syndicated 90 minute religious program. Its format consisted of news, public affairs, instructional and other informational programming, interspersed with gospel music and religious material. This program was broadcast from December 1979 until February 1982, when it switched to another station. *I.D.*, para. 39; *see also* Bur. Fdgs. at 14-16, 29. *Other religious programs* were broadcast by WSNS-TV during the license period. Among these programs broadcast for a substantial portion of the period were one hour religious gospel programs of "Jimmy Swaggart," "Jerry Falwell," and the "The Ernest Angley Hour"; as well as half hour gospel programs such as "It Is Written", "Rev. Nelson Patterson," "The King Is Coming," and "Oral Roberts." The station also broadcast a number of religious dramas, specials, and telethons during the license period. It did not carry any live religious programs from churches and synagogues because it did not have a remote unit. *I.D.*, para. 40; *see also* Bur. Fdgs. at 17-18.

(e) *TV College* was produced by the city colleges of Chicago. It was broadcast for an hour, four days a week, and for four hours on Saturday. This program enabled viewers to continue their education and earn college credits without attending classes. Broadcast from December 1979 until July 1982, it then switched to another station in the community. I.D., para. 38; see also Bur. Fdgs. at 13-14, 29.

(f) *Mundo Hispano,* a 60 minute Spanish language program, was broadcast each weekday during the later morning hours. Its producer purchased time on the station, and the program was very popular, in part, because for years it had been the only Spanish language program broadcast during daytime hours in Chicago. Broadcast by WSNS-TV from December 1979 until May 1982, it was terminated by its producer who was concerned about the advent of STV. I.D., para. 41; *see also* Bur. Fdgs. at 16-17.

(g) *Children, Sports,* and other *special programs* formed a significant part of the station's programming during the license term. *I.D.*, paras. 40, 42-45; *see also* Bur. Fdgs. at 25-29.

(h) Video 44 program statistics were compared with other television stations in Chicago. In essence, Video 44's percentage of news and public affairs programming was the lowest of the eight other Chicago area stations, but its percentage of other non-entertainment programming was the highest with two exceptions. *I.D.*, paras. 55-61; *see also* Bur. Fdgs. at 20-21.

(i) Letters from Video 44's audience praising and criticizing the station's programs were also reviewed. Generally, many of these letters praised Video 44's older programs which had been replaced, and criticized the need to pay for STV, and the violence and sexual orientation of some of the programs. *I.D.*, para. 54; *see also* Bur. Fdgs. at 22-23.

CONCLUSIONS

21. Legal and factual considerations have convinced the Board that *United Broadcasting* does not support the ALJ's narrow focus upon a thin sliver of Video 44's past broadcast record. There is a certain irony in his use of *United Broadcasing,* for in that case the Review Board had concluded that the public interest required it to review a station's lengthy 12-year past broadcast record. The Commission disagreed with the Board, but only because the licensee had not been put on notice at the outset that it would be judged on that lengthy record. Here, Video 44's past broadcast record began in 1970. Yet it was not primarily judged on its total history, or even on its most recent three-year license term, but on its last 13-26 weeks, after a sea change from "free" to subscription television programming.

22. Sound legal and factual reasons establish that the ALJ erred in subjectively overemphasizing the desirability of certain types of programming and minimizing, for example, Video 44's institutional and syndicated programming, which the licensee concluded served the same community needs. History reminds us that at another point in the development of broadcasting, regulators in the *Blue Book-Hearst* controversy became fixated on local live and *sustaining* programming, at the very time when technological developments had rendered those concepts passe' and obsolete. *See* Barnouw, *The Golden Web, A History of Broadcasting in the United States* (1968), pp. 227-235, 204, 244-245. But, the Commission has much more recently indicated that each licensee has very broad discretion in selecting programming that it believes responsive to the community's needs, problems and interests. *See, e.g., Broadcasting Renewal Applicant,* 66 FCC 2d 419, 428 (1977); *En Banc Programming Inquiry, supra,* 44 FCC at 2312-2317; *see also Intercontinental Radio, supra,* 98 FCC 2d at 630-631.

23. Given our constitutional imperatives, the Court, the Commission, and this Board have all recognized that a broadcaster's legitimate renewal expectancy cannot turn on wholly subjective programming judgments. *See Pillar of Fire, supra,* 99 FCC 2d at 1268-1273 (rejecting attack directed at "fundamentalist" religious-oriented programs); *Broadcast Communications, supra,* 93 FCC 2d at 1169 (rejecting complaints about station's foreign language programming). Controlling legal principles command us to review the record for objective or concrete evidence that a station has continued to search out and tried to serve its community's tastes, needs, and desires not only for religious and business "news", but also for other varied needs. Video 44's record, which is detailed more fully in the Mass Media Bureau's and ALJ's findings of fact, establishes that the station has earned a renewal expectancy, albeit one not as weighty as in a number of prior cases. In this case, even the licensee concedes that in the last 13 weeks of the subject license term it all but eliminated its non-entertainment programming. Notwithstanding, that renewal expectancy, we believe, defeats its competitor's very meager preferences on the structural diversification and ownership- participation factors. *See Comparative Policy Statement on Comparative Broadcast Hearings,* 1 FCC 2d 393, 394-396 (1965). Even here, Monroe's comparative attributes are relatively weak, because it currently owns four other radio stations, and numerous cable interests, and less than 50% of its ownership would participate (but

not even fulltime) in the management of its proposed station. *I.D.*, paras. 90-91. Under the *Policy Statement's* comparative guidelines, Monroe offers very little indeed.[4]

24. Summing up, Video 44 is entitled to a legitimate licensee renewal expectancy (albeit diminished somewhat by its end-term performance) and Monroe offers nothing very much under the traditional comparative criteria set forth in the *Policy Statement* routinely used to predict the superior applicant. *Compare Intercontinental Radio, supra,* 98 FCC 2d at 644-647. Video 44's license will therefore be renewed. As the D.C. Circuit pointed out in 1930 at the beginning of broadcast regulation:

> It is not consistent with true public convenience, interest, or necessity, that meritorious stations . . . should be deprived of broadcasting privileges when once granted to them, which they have at great cost prepared themselves to exercise, unless clear and sound reasons of public policy demand such action. The cause of independent broadcasting in general would be seriously endangered and public interests correspondingly prejudiced, if the licenses of established stations should arbitrarily be withdrawn from them, and appropriated to the use of other stations. This statement does not imply any derogation of the controlling rule that all broadcasting privileges are held subject to the reasonable regulatory power of the United States, and that the public convenience, interest, and necessity are the paramount considerations.

Chicago Federation of Labor v. F.R.C., 59 App. D.C. 333, 334,41 F.2d 422, 423 (1930). *See also Central Florida, supra,* 683 F.2d 509 n. 31 (approving Commission's view that a renewal expectancy based on incumbent's meritorious record outweighs challenger's sole advantages under the structural factors of integration and diversification); *accord, Victor Broadcasting, supra,* 722 F.2d at 765.

25. ACCORDINGLY, IT IS ORDERED, That the application of Video 44 for renewal of license of Station WSNS-TV, Chicago, Illinois IS GRANTED and that the application of Monroe Communications Corporation IS DENIED;

26. IT IS FURTHER ORDERED, That the petitions for leave to amend filed on February 13, April 19, July 29, 1985, and February 5, and June 1, 1987 by Video 44, and on February 24, 1987 by Monroe Communications Corp., ARE GRANTED to the extent indicated in note 4; and

27. IT IS FURTHER ORDERED, That the motion to accept late pleading filed August 12, 1985 by Monroe Communications Corp. IS GRANTED; and the motion for leave to file supplemental brief filed February 16, 1988 by Video 44 IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

FOOTNOTES

[1] Board Member Esbensen was not present at the oral argument held in August 1985; however, in accordance with Section 0.361(c) of the Rules, 47 CFR 0.361(c), he has read the transcript of the argument and is participating in the Board's decision.

[2] Subscription television (STV) utilizes existing television channels and charges its customers a fee for a decoder to decipher scrambled television signals. The major difference between conventional television and STV is that the audience must pay for STV. Effective August 5, 1982, the Commission eliminated the requirement that STV operators broadcast weekly 28 hours of conventional programming in an unscrambled mode. *See Subscription TV Service, Third Report and Order,* 90 FCC 2d 341 (1982).

> It has been reported that:
>
> "STV stations are standard VHF or UHF television stations that scramble their signals. The STV operator then charges customers a fee for a decoder to decipher the scrambled signals.
>
> Authorized in December 1968, STV did not really get off the ground until the late 1970's. It grew rapidly for a few years, and counted about 1.4 million subscribers in the summer of 1982. But it's been in a steep decline ever since, the victim of stiff competition with cable systems offering more channels for less money. The number of STV subscribers has sunk to around 500,000."

Broadcasting Primer, with Notes on New Technologies (New York 1985) at 12.

The Bureau and the ALJ had asserted that Video 44 had ample notice that its STV operation would be judged by the same standards as a conventional television station seeking renewal. A full review of this matter at oral argument, Tr. 1311-1335, 1347-1354, 1373-1380, revealed many unanswered questions. The Board, having itself reviewed the history of STV, certified the question to the Commission for its policy guidance. *See Certification Order, supra,* 102 FCC 2d at 412-413.

[3] In a recent Rule Making proceeding, the Commission issued a new policy decision concerning STV in which it concluded that STV video programming services are available only on a subscription basis and are not "intended to be received by the public" and thus do not constitute "broadcasting" within the meaning of 47 U.S.C. §153(o). *See Subscription Video,* 2 FCC Rcd 1001 (1987), *review pending sub nom. National Association for Better Broadcasting v. FCC,* No. 87-1198, D.C. Cir., FCC brief filed January 5, 1988. In that proceeding, Video 44 has filed a petition for reconsideration requesting the Commission to indicate that its decision, which could have an impact on the renewal expectancy determination for STV operators, be made retroactive and applicable to the present comparative hearing. See In re: *Monroe Communications, supra,* 840 F.2d at 945 n. 3. The Board's instant decision does not take into consideration the Commission's 1987 *STV* policy or Video 44's pending petition for reconsideration on this matter, but follows instead the express guidance provided in response to our *Certification Order.*

[4] Monroe generally supported the ALJ's Initial Decision, but did file limited exceptions. We have previously rejected Monroe's claim that some of Video 44's STV programming was indecent pursuant to *FCC v. Pacifica Foundation,* 438 U.S. 726 (1978). *See Certification Order, supra,* 102 FCC 2d at 410, and the FCC's *Modification Order, supra,* 3 FCC Rcd at 760 note 2. We will deny the other exceptions, adopting the reasons articulated by the

presiding ALJ, or by the Mass Media Bureau in its Consolidated Reply, pp. 15-21. In amendments filed February 13 and July 29, 1985, Video 44 informed the Commission that, effective June 30, 1985, it terminated its STV programming service, and that beginning July 1, 1985 it became affiliated with a network which broadcasts Spanish language programming in the conventional television mode. On April 19, 1985, and February 5 and June 1, 1987, Video 44 reported certain changes in its ownership of other media interests. These amendments will all be accepted to satisfy the requirements of Section 1.65 of the Commission's Rules, 47 CFR 1.65, but this material will not be considered in the resolution of the comparative case. The same holds true for a petition for leave to amend filed on February 24, 1987 by Monroe.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CABLE & WIRELESS COMMUNICATIONS, INC. File No. I-T-C-88-090

Application for authority to resell services of US Sprint Communications Company for the purpose of providing switched voice services from the United States to the Federal Republic of Germany.

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 26, 1988; Released: June 7, 1988

By the Chief, International Facilities Division:

1. The Commission has under consideration the above-captioned application of Cable & Wireless Communications, Inc. (C&W) requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell, on a contractual basis, the services of US Sprint Communications Company (US Sprint) for the purpose of providing switched voice communications services from the United States to the Federal Republic of Germany. The application was placed on the Commission's public notice March 23, 1988. No comments were filed in response to the notice.

2. C&W is a domestic common carrier currently authorized to provide international switched voice resale services between the United States and numerous foreign points.[1] In application File No. I-T-C-88-090, C&W seeks authority to resell, pursuant to contractual arrangement, the switched voice services of US Sprint in order to provide service between the United States and the Federal Republic of Germany. Sections 211(a) and 201(b) of the Communications Act permit carriers to arrange inter-carrier dealings by contract rather than tariff.[2] Furthermore, the Commission's *Competitive Carrier International* decision [3] does not place any restrictions on the acquisition of facilities by contract by dominant, foreign-owned carriers such as C&W. We have reviewed the C&W/US Sprint contract and find it to be consistent with others we have approved in the past.

3. In recent authorizations of new entrants to the international market, the Commission has found that increased competition for resale services is beneficial to consumers.[4] With respect to the instant application, we find that the market will support the provision of additional service by C&W and that the added competition will be in the public interest.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-090 IS GRANTED and C&W is authorized to resell, on a contractual basis, the services of US Sprint to provide international switched voice communications services between the United States and the Federal Republic of Germany.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See , e. g.*, Cable & Wireless Communications Inc., File No. I-T-C-88-007 *et. al.*, DA 88-567 (released April 29, 1988); Cable & Wireless Communications, Inc., File No. I-T-C-87-004, DA 87-148 (released February 20, 1987).

[2] *See also* Bell Telephone Co. of Pennsylvania v. FCC, 502 F. 2d 1250, 1276-8 (3rd Cir. 1974), *cert. denied* 422 U.S. 1026 (1975), reh'g denied 423 U.S. 886 (1975).

[3] International Carrier Policies, 102 FCC 2d 812, 842-3 (1985); aff'd on recon., CC Docket No. 85-107, FCC 86-339 (released August 7, 1986).

[4] See Teltec Saving Communications Co., Mimeo No. 3548, n.2 (released April 4, 1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-48

In re Applications of

GENESEE COMMUNICATIONS, INC.
Batavia, New York — File No. BPCT-851017KI

THE M&M PARTNERSHIP
Batavia, New York — File No. BPCT-851209KG

For Construction Permit for a
New Television Station at
Batavia, New York

MEMORANDUM OPINION AND ORDER

Adopted: May 27, 1988; Released: June 7, 1988

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. This proceeding involves the mutually exclusive applications of Genesee Communications, Inc. (Genesee) and The M&M Partnership (M&M) for authority to construct a new television station to operate on Channel 51 in Batavia, New York. In an *Initial Decision*, FCC Rcd 7252 (1987) (I.D.), presiding Administrative Law Judge James F. Tierney (ALJ) held that both applicants were entitled to full quantitative integration credit but that M&M should receive a dispositive preference on the basis of its female and minority preferences. In exceptions filed with the Review Board on January 20, 1988, Genesee urged, *inter alia*, that the ALJ erred in denying its petition to enlarge issues against M&M to specify transmitter site availability, misrepresentation, and financial certification issues. Oral argument on the exceptions was heard on April 29, 1988. After due deliberation, we conclude that this proceeding must be remanded for additional hearing on a site availability issue against M&M. [1]

2. In a petition to enlarge issues, filed September 25, 1987, Genesee alleged that M&M has never obtained reasonable assurance of its proposed transmitter site either from the site owners or the current lessee. Specifically, Genesee recited that M&M's application, as amended, specified a proposed transmitter site on "Pikes Peak" near Covington, New York, and certified that reasonable assurance of use of the site had been obtained from its owner, Arnold Logsdon. To challenge M&M's representation, Genesee attached an affidavit from Willard O. Logsdon and Mary Jane Logsdon stating (l) that they are the owners of Pikes Peak; (2) that "nobody" has approached them about acquiring their land; (3) that they "have never had any communication from M&M Partnership"; and, (4) that they "have no intention of selling the land to M&M Partnership or entering into negotiations to sell the land to M&M Partnership." Genesee also submitted an affidavit from Robert Jeffres, who asserted that he currently leases land from the Logsdons' on Pikes Peak; that he has a communications tower on the property; and that he has "never had any person or persons known as M&M Partnership approach me . . . to the availability of the land or use of my tower which is not available now nor will it be available in the future." Finally, Genesee attached the affidavit of Mr. & Mrs. Logsdon's son, Arnold Logsdon, who stated that he was approached by M&M principal Melvin Watkins who inquired as to the availability of the land, that he referred Watkins to his parents, and that no sale or lease terms were discussed or agreed to in that meeting. Genesee concluded from the foregoing in its petition, as it does now, that M&M never had, and does not currently have, reasonable assurance of its proposed site.

3. In its October 8, 1987 opposition to Genesee's petition, M&M asserted that Genesee had notice of M&M's site proposal for over a year and its petition was therefore grossly untimely. On the merits, M&M attached an affidavit from its principal, Melvin Watkins, who recited that on February 12, 1986 he visited the area of the proposed site where he encountered Arnold Logsdon, that the latter informed him that he owned the property along with his parents, and "that he would be willing to sell or lease . . . land sufficient for the erection of a communications tower." M&M also submitted a copy of a letter from Watkins to Logsdon, executed by both parties, which memorialized their purported agreement regarding Arnold Logsdon's willingness to make the land available. M&M concluded then, as it does now, that it was entitled to rely on Arnold Logsdon's representation of ownership, and thereby to obtain reasonable assurance of the proposed site from Logsdon.

4. We cannot agree with M&M that its principal's contact with Arnold Logsdon provided it with reasonable assurance of its proposed transmitter site. [2] Even accepting M&M's contention that Arnold Logsdon represented himself as the site owner, and assuming *arguendo* that it relied in good faith on his representation, it is now readily apparent that Willard and Mary Jane Logsdon are the true owners of M&M's proposed site and are the only persons in a position to sell and/or lease the land in question. M&M does not dispute that Mr. and Mrs. Logsdon are the site owners or their statement that they do not intend to sell the land to M&M. In its reply brief (at p.5), M&M contends that the Logsdons have not expressly ruled out a future lease of the site by M&M. Reasonable assurance, however, like ambition, must be made of sterner stuff. It is the applicant's affirmative obligation to obtain such assurance; it may not rely on a negative inference drawn from the site owner's general statement of non-availability to claim that in certain other circumstances the site might become available. Although reasonable assurance may be acquired in numerous ways, there must at least be a meeting of the minds resulting in some firm understanding as to the site's availability. *Progressive Communications, Inc.*, 61 RR 2d 560 (Rev. Bd. 1986); *Dutchess Communications Corp.*, 101 FCC 2d 243, 253 (Rev. Bd. 1985). Here, M&M did not reach any understanding whatsoever with the site's owners or its lessee; M&M's subjective belief, however reasonable, that its proposed site will be available simply will not suffice. *See Progressive, supra*, at 562.

5. In remanding this case for further hearing, [3] we specifically notice M&M that in the event that it seeks to amend its application to specify a new transmitter site, any such amendment must be accompanied by a full showing of good cause. *See* 47 CFR 73.3522(b); *Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140 (Rev. Bd. 1970) (setting forth the six elements of the good cause test). We note further that in the case of engineering amendments, the additional "foreseeability" standard must also be addressed. *See California Broadcasting Corp.*, 90 FCC 2d 800, 809 (1982); *Belo Broadcasting Corp.*, 68 FCC 2d 1313 (1978).

6. ACCORDINGLY, IT IS ORDERED, That this proceeding IS REMANDED for further hearing in accordance with this opinion and for preparation of a Supplemental Initial Decision as may be required by the supplemental record; and;

7. IT IS FURTHER ORDERED, That the issues ARE ENLARGED as follows:

> To determine whether M&M Partnership has reasonable assurance of the availability of its proposed transmitter site, and in light thereof, whether it possesses the basic qualifications to be a Commission licensee.

8. IT IS FURTHER ORDERED, That the burden of proceeding under the issue added herein SHALL BE on Genesee Communications, Inc., and the burden of proof SHALL BE on M&M Partnership.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] We see no basis in the pleadings currently before us to designate the additional issues requested by Genesee. The ALJ retains broad lattitude in conducting the hearing, however, and should the record developed on the remanded issue so warrant, he may enlarge the issues to explore these matters as well.

[2] The issue of transmitter site availability, concerning as it does M&M's basic technical qualifications to be a licensee, involves a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of Genesee's late-filed request for the issue. *See* 47 CFR 1.229(c).

[3] On May 11, 1988, M&M submitted a motion for leave to file supplemental brief together with a supplemental brief in which it suggests that the Board may wish to consider directing M&M to file additional information regarding its proposed site or an amendment of its technical proposal with the Board. We decline this invitation. Consideration of application amendments together with a good cause showing is, in the normal adjudicatory course, a matter for the ALJ in the first instance. Here, in particular, where it is the ALJ's ruling on a petition to enlarge issues that is the subject of appeal, we believe the matter should be returned to him for full evaluation.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 84-281

In the Matter of

Nighttime Operations on
Canadian, Mexican, and
Bahamian Clear Channels

SECOND REPORT AND ORDER

Adopted: April 6, 1988; Released: June 8, 1988

By The Commission:

INTRODUCTION

1. The Commission has before it the comments and reply comments[1] filed in response to the *Further Notice of Proposed Rule Making (Further Notice)* [2] in this proceeding proposing new rules to govern the establishment of new full-time AM stations on the newly available foreign Class I-A clear channels. [3]

BACKGROUND

2. The original *Notice of Proposed Rule Making* (NPRM)[4] was adopted in this proceeding on March 15, 1984, to consider amending the rules to permit nighttime broadcasting by United States radio licensees on the 14 frequencies designated as Canadian, Mexican and Bahamian Class I-A clear channels.[5] For many years, nighttime use of these foreign clear channels had been precluded in large parts of the United States by international agreements. These agreements imposed limitations on the nighttime use of these channels that far exceeded that necessary to avoid interference.[6] However, new agreements which had been or were being negotiated in 1984 were based solely on protection from interference. As a result, it became possible to use these frequencies more extensively at night in the United States. Consequently, the Commission sought comment on their most effective use. Initially, the Commission proposed rules similar to those then employed for the 25 U.S. Class I-A clear channels which required applicants to meet both technical and non-technical acceptance criteria.[7] According to the NPRM, applications would be accepted for filing if they were designed to serve unserved or underserved areas or communities, "the service-based criteria". For new stations proposed in already served areas, the Commission would only accept applications by minorities or noncommercial entities, "the ownership-based criteria". Under either of these categories of non-technical acceptance criteria, however, full compliance with applicable interference standards would be required.

3. The Commission conducted a number of intensive and wide ranging studies to determine the pattern of use of the foreign clear channels and the degree to which they might be available for the establishment of new full-time stations.[8] These studies, *inter alia*, examined the potential value of these frequencies and indicated that the majority of opportunities to establish new stations would occur in unserved or underserved areas. After reviewing these studies, the Commission concluded in its *Report and Order* [9] that the need to impose new service-based criteria designed to encourage filings in such areas no longer existed. It determined, however, that applicants should be required to meet the technical criteria concerning interference. Further, since the ownership-based non-technical acceptance criteria were designed as an exception to the service based criteria, the Commission concluded there was no need to provide an alternative basis for accepting applications based on the nature of the applicant. It emphasized that, even without such acceptance criteria, these newly available frequencies would be available to minority and noncommercial applicants.

4. In the *Report and Order*, the Commission also adopted rules permitting most of the daytime-only stations on the foreign clear channels to operate at night. Because it did not want to preclude opportunities that might be available to establish new full-time stations on these channels, it provided an initial five year period during which interference protection would not have to be afforded the nighttime operations of the former daytime- only stations. This was intended to give stations the opportunity to seek an increase in nighttime power up to 500 watts, through directionalization or otherwise, without concern for the effects on one another. Equally important, it afforded an opportunity for new station applications to be filed during this period without regard to the nighttime impact on the former daytime-only stations.[10] The consequence of these measures was to preserve all otherwise available opportunities to establish new full-time stations on these channels.

5. The National Black Media Coalition (NBMC) sought judicial review of the *Report and Order*.[11] Specifically, it alleged that the Commission improperly refrained from adopting special provisions for minority and noncommercial applicants and asserted that there were procedural defects in the Commission's action. In particular, NBMC pointed out that the Commission's action differed from the proposal in the Notice and was based in part on studies which had not been made available for public comment. The Court of Appeals agreed that the Commission's action did not fully comply with the requirements of the Administrative Procedure Act, (5 U.S.C. § 551 *et seq.) seq.*). Additionally, the court held that the Commission's action had to be set aside because unpublished data was used in reaching the conclusions in the *Report and Order*, and it remanded the matter to the Commission.[12] Since neither NBMC nor any other party had sought review of the portion of the decision granting nighttime operation to the daytime-only stations of the foreign clear channels, this aspect of the proceeding is no longer before the Commission. Consequently, the major substantive issue to be decided in this proceeding is whether the Commission should limit the acceptance of applications for *new* full-time stations on these foreign clear channels by adopting new non-technical, as well as technical, acceptance criteria. The procedural issue of adequate notice: in this case, public disclosure of the data on which our prior decision was based, also was cured as explained below.

6. Pursuant to the Court of Appeals' remand, the Commission issued the *Further Notice* to reopen this proceeding and to determine what policies with respect to these

newly available channels we should adopt. Interested parties were invited to comment on a proposal to accept new applications to use the newly available foreign clear channels based solely on technical criteria (i.e. based on interference considerations) and thereby dispense with the imposition of non-technical acceptance criteria. In particular, the Commission directed the attention of those submitting comments in this proceeding to the Rule Making proceeding in MM Docket No. 85-39, in which we deleted similar non-technical acceptance criteria then applicable to the 25 U.S. Class I-A clear channels.[13]

7. To ensure a solid technical foundation for its recommendation, the Commission performed new and more extensive engineering studies regarding the current pattern of use of these frequencies, and it attached them to the *Further Notice*.[14] These studies further supported the proposition that opportunities to establish new full-time stations on these channels are limited. Interested parties were asked to comment on these studies as well as the Commission's tentative view that the overall public interest does not warrant adoption of non-technical acceptance criteria for the foreign clear channels.

COMMENTS

8. CPB and NPR argue that public broadcasters do not yet provide service to all of the United States and that therefore they need the "edge" which the imposition of non-technical acceptance criteria could provide. These commenters believe that public radio and minority applicants warrant special encouragement even though temporary delays in new service provided by these groups may result. Specifically, CPB and NPR remind the Commission of the organizational structure of public broadcasting which requires the development of community and institutional support, the acquisition of funding grants, and the constitution of community boards of directors critical to decision making. Despite these hurdles which lengthen the time it takes to file an application, these representative organizations assert that additional opportunities do in fact exist for public broadcasting service on the AM band.[15]

9. NPR questions the Commission's methodology for generating the maps that are the basis for the Commission's conclusions concerning available opportunities. NPR also disputes the use of estimated ground conductivities in performing the calculations,[16] the scale of the maps on which the results are depicted and the preparations of the map by hand. In fact, NPR contends that the maps are inherently inaccurate because they involved hand drawn rather than computer generated maps in which contour plots for the seven relevant channels (co-channel and six adjacent channels) were examined and corresponding cross-hatching material was cut out and affixed to the map. It suggests that it would have been more useful to depict the information on maps having a scale of 1:500,000 (or about 8 miles per inch) instead of depicting the entire United States on a single sheet of 8 1/2 x 11 paper. The scale used by the Commission (approximately 277 miles per inch) is said by NPR to be inadequate to indicate modestly sized areas where a small urban station might be established.

10. On the other hand, the commenters supporting the *Further Notice* argue that the imposition of non-technical criteria would hinder the most efficient use of the channels. They assert that adoption of additional criteria will discourage new service where it might otherwise be established. ABES emphasizes that unless co-channel and adjacent channel protection standards are relaxed, the Commission's studies completely support the conclusion that the opportunity for assigning new full time stations on the foreign clear channels is minimal. ABES further suggests that minorities and non-commercial entities are not interested in the available frequencies since they have not applied for them. NAB also encourages the Commission to eliminate all artificial barriers to the expansion of AM radio service and submits that the rationale used in MM Docket 85-39 is equally applicable in this proceeding. Of particular concern to those opposing the imposition of ownership based criteria is the possibility that minorities and non-commercial entities might not apply for these frequencies even if non-technical acceptance criteria relating to minorities and non-commercial entities were adopted; they assert that the imposition of such criteria would effectively eliminate all other classes of applicants. In such case, the frequency could lie fallow and aural service to those desiring it would not be fostered.

11. The NBMC did not submit initial comments. In reply comments, however, it offers a new proposal for the use of the foreign clear channels. It suggests a one-year experimental approach that it believes could provide for prompt use of these frequencies and at the same time provide a mechanism for enhancing minority and noncommercial ownership.[17]

DISCUSSION

12. After a careful review of the record in this proceeding, we have decided not to adopt rules which would impose non-technical acceptance criteria on applications for new full time stations on the newly available foreign Class I-A clear channels for the same reasons that we deleted these criteria for domestic clear channels in MM Docket 85-39.[18] Nothing in the comments undermines our conclusion that there are only limited opportunities to use these foreign clear frequencies to establish new full-time stations. Since our studies show that the vast majority of opportunities for establishing new full time stations already exists in areas with limited or no service, there is no compelling justification for the imposition of service based criteria to encourage applicants to apply in these unserved or underserved areas.

13. As noted above, CPB has provided a list of markets which it says lacks effective public radio service and where new stations allegedly could be established. We have examined each of these markets and have included the results of our studies in Appendix B. These studies show that in the majority of cases it would not be possible to locate a new AM station in the markets identified in CPB's list. A significant number of the markets lie within the protected contours or interfering contours of existing stations. In such cases the proposed stations would not be able to comply with Section 73.37(a) of the FCC rules pertaining to prohibited contour overlap.[19] In other cases, where the market does not lie within the protected or interfering contours of existing stations, requisite daytime and nighttime protection to existing stations could result in directional antenna designs of such complexity and cost that the proposed station would not be feasible.[20] Finally, even in cases where these obstacles can be overcome, the nighttime RSS limit[21] of such a proposed station (that is, the contour within which it could provide interference-free service) may be so high as to render effective service

impossible. For example, in the market of Amarillo, Texas, which was included on CPB's list, the proposed station's RSS limit would be in excess of 100 mV/m.

14. We have also carefully reviewed NPR's concerns regarding the maps relied on by the Commission in performing the studies and, in particular, its objections to the scale of the maps and the handwork done in their preparation because, in NPR's estimation, our procedures obscured some of the areas of station availability. Several observations need to be made in response to these concerns. As a general matter, it should be noted that the Commission's maps were not designed to show *conclusively* where new stations could be established. Instead, they were merely intended to serve as a rough guide in identifying potential areas that might be suitable for locating new stations. Thus, to accomplish this, the Commission devised maps depicting the areas where the daytime contours of existing stations could not overlap as well as the locations of second and third adjacent channel stations which also have to be considered in determining potential interference. The maps were not intended to reflect each and every technical parameter that could possibly relate to where new stations could be located nor were they designed to take into account certain specific technical factors which must be borne in mind by individual applicants in determining whether a station is feasible in a given location. As explained below, there are other considerations relating to the technical acceptance criteria under Section 73.37 that can affect the opportunity to establish a full-time station and its feasibility.

15. First, any proposed station would have to be located at some distance from the cross-hatched areas on the map so that no prohibited overlap with existing station contours would occur.[22] Second, there are important nighttime restrictions which, as explained below, it was not possible to depict. Actual locations could not be used because there was no way to know where a party might desire to locate a new station. The only alternative would have been to use locations throughout the area, but analyzing the nighttime situation affecting each theoretically available location would have been an overwhelming task. Aside from the enormous burdens involved, there would be no purpose served by performing studies of this nature unless there was some way of knowing what facilities an applicant actually planed to use or the coverage desired by the prospective applicant or its willingness to construct the expensive multi-tower directional array which would be required in many cases. Moreover, in many instances, these unknowns become moot where it turns out that it is impractical to construct the facility due to complexity or lack of an appropriate antenna site.

16. In terms of the studies themselves, we continue to believe they accurately reflect the pattern of use on these channels. It is true that using measured conductivity values, where they are available, could give a more precise picture of an individual station's coverage. However, such data do not exist in most cases. Even if available data were taken into account, the general pattern of use, which was what the Commission's studies were designed to determine, would not have been altered. Moreover, it is important to bear in mind that the rules specifically call for the use of conductivity values from FCC Figure M3 in making calculations and allow, but do not require, submission of measurements by an applicant. Clearly, it was appropriate to rely on Figure M3 in making the studies, and the possible up- dating of Figure M3 some years hence is not a basis for questioning the validity of the Commission's existing methodology.

17. As for NPR's criticisms of the maps involved, it should be noted that following NPR's suggestion would mean plotting the pertinent data on a map in which the United States would measure about 33 feet by 20 feet. Necessarily, using a map of this scale would require dividing the country into countless segments, thereby multiplying the already sizeable undertaking in individually studying and plotting seven frequencies for each of the 14 foreign clear channels. It would have been impractical to proceed in such an overly burdensome fashion. Indeed, it was not necessary to do so. The scale of the maps used by the Commission provided sufficiently reliable results. Any inexactitude introduced by the scale of the map or the hand work in cutting out cross-hatching was more than outweighed by the fact that the area of preclusion extends beyond the area of cross-hatching.[23] Finally, even if a particular applicant through individual measurement analyses might be able to locate a station in an area that is already congested, this hardly constitutes sufficient reason for the adoption of non-technical criteria across-the-board.

18. Our review of the situation affecting these frequencies convinces us that there are relatively few opportunities to establish new full-time stations and that most of these opportunities are outside the more populated areas. This conclusion is further reinforced by the results of our studies performed on the list of markets submitted by CPB in its comments. While there may be some exceptions, that fact does not warrant the imposition of non-technical acceptance criteria. If areas are characterized by few existing services where it may be practical to implement new AM service, there is no need to make special provision for proposals to provide service to such areas. Similarly, there is no reason to provide an alternative basis for filings if applicants already had qualified under the principal technical non- interference criteria.

19. The record supports our conclusion that, for reasons similar to those that led us to eliminate acceptance criteria based upon minority or noncommercial ownership for applications for domestic clear channels in MM Docket No. 85-39, such acceptance criteria would not serve their intended purposes with respect to the allocation of the foreign clear channels. Because the opportunities for obtaining licenses on these particular frequencies are even more limited than were the opportunities for obtaining frequencies on the domestic clear channels (MM Docket No. 85-39), non-technical acceptance criteria would not increase ownership by minorities and noncommercial entities in any meaningful way, and thus would not advance our policies designed to promote those interests.

20. It is important to emphasize that the absence of the non-technical acceptance criteria will not limit minorities and noncommercial broadcasters from applying for new stations in either the few urban areas capable of providing an available frequency or in the unserved and underserved areas. We note that we are not faced with a situation where reservation of frequencies is necessary to ensure that minority or noncommercial voices will be heard. The available sites for these channels are in areas where there is sufficient vacant spectrum, in both the FM and television bands, to accommodate the needs of these interests. Because of the abundant availability of spectrum in most of these areas, minorities and noncommercial applicants are likely to face little competition. As a result, establish-

ing a "set aside" policy by employing non-technical acceptance criteria would not effectively advance the interests of these groups.

21. On the other hand, applying the ownership-based criteria without applying the service-based criteria would, in effect, limit the acceptance of applications for use of the foreign clear channels exclusively to minority and non-commercial applicants. As a practical matter, imposing non-technical acceptance criteria may result in frequencies lying fallow and, consequently, in the public being deprived of new AM radio service in the few areas where full time opportunities exist. From a public policy perspective, we have reservations about adopting non-technical acceptance criteria where their net effect may be to hinder the rapid development of new full time AM services or to delay the public's access to new or increased radio services without producing any significant countervailing benefits. Moreover, minority applicants for these stations would be able to take advantage of the Commission's minority preference policy in the event that a comparative hearing is required.[24] We believe that application of our minority comparative preference policy, as well as our other minority ownership policies, provides a strong incentive to minorities to apply for these frequencies. Our decision not to adopt acceptance criteria based on minority ownership does not affect or modify our existing minority ownership policies in any way.[25]

22. For these reasons, we continue to believe that the best approach is to provide for the filing of applications by any interested party, including minorities and noncommercial applicants. This can bring needed services promptly where there is interest in doing so and the allocation situation permits. Keeping these frequencies in reserve is not justified, and based upon our analysis herein we decline to adopt nontechnical acceptance criteria applicable to the foreign clear channels.

23. As for NBMC's proposal to create a 30-day window for minority and non-commercial applicants once a qualified applicant has filed, we think that this proposal goes beyond the scope of the current proceeding. Since this proposal was first presented in the reply coments, other interested parties have not had any opportunity to consider and comment on this novel procedure in the context of this rule making. Moreover, NBMC's proposal appears to be generally designed for applications for any radio and television services and thus it may be more appropriate to consider it in the context of a general review of our rules, especially since the proposal appears to raise important public policy and constitutional issues. For these reasons we decline to pursue the NBMC proposal in this proceeding.

PAPERWORK REDUCTION ACT

24. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labelling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

25. Accordingly, IT IS ORDERED, That the amendments which were adopted in the *First Report and Order* in this proceeding are reaffirmed, effective **July 25, 1988.**

26. IT IS FURTHER ORDERED, That the staff resume the processing of applications for AM stations on the 14 foreign clear channels that had been suspended pending the completion of this Rule Making.

27. IT IS FINALLY ORDERED, That this proceeding IS TERMINATED.

28. Authority for this action is contained in Sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended.

29. For information concerning this proceeding, please contact Vicki Assevero, (202) 632-7792, Mass Media Bureau.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

Comments filed by the Corporation for Public Broadcasting (CPB) in MM Docket 84-281 included a list of markets lacking adequate public broadcasting service which it believed could be served by use of one or more of the foreign clear channel frequencies. The following are the results of FCC analysis of the list provided by CPB.

The analysis took into account only technical considerations that immediately indicated whether a frequency could not be used. In those markets where this analysis indicates that a frequency may be usable, additional technical factors must be considered to determine if the frequency could be used in actual practice. It should also be noted that in some cases only the nighttime situation is noted. In these cases the nighttime RSS limit is so high that a new fulltime facility would not be feasible.

The daytime analysis was done on the basis of the proscriptions against contour overlap contained in Section 73.37 of the Commission's rules.

HAGERSTOWN - FREDERICK, MD 1540 kHz

Unusable

The cities of Hagerstown and Frederick, as well as the surrounding area, are inside the 0.025 mV/m contour of co-channel station WMDO, Wheaton, Md. on 1540 kHz making this frequency unusable at this location.

HAGERSTOWN - FREDERICK, MD 1570 kHz

Unusable

The cities of Hagerstown and Frederick, as well as the surrounding area, are inside the 0.025 mV/m contour of co-channel station WFEL, Towson, Md. on 1570 kHz making this frequency unusable at this location.

BAKERSFIELD, CA 730 KHZ

Possibly usable

It appears that use of 730 kHz at Bakersfield, Ca. may be possible.

AUGUSTA, GA - AIKEN, SC 1220 kHz

Unusable

The 0.5 mV/m contour of the first adjacent channel station WCKJ, Augusta, Ga. on 1230 kHz completely encloses the area of Augusta, Ga. and Aiken, Sc. making this frequency unusable at this location.

AUGUSTA, GA - AIKEN, SC 1570 kHz

Unusable

The cities of Augusta, Ga. and Aiken, Sc. as well as the surrounding area, are inside the 0.025 mV/m contour of co-channel station WGSR, Millen, Ga. on 1570 kHz making this frequency unusable at this location.

UNIVERSITY PARK, PA 1570 kHz

Unusable

The community of University Park, Pa. (part of State College, Pa.) as well as the surrounding area, is inside the 0.025 mV/m contour of co-channel station WPGM, Danville, Pa. on 1570 kHz making this frequency unusable at this location.

HAZLETON - POTTSVILLE, PA 1540 kHz

Unusable in Hazleton, Possibly usable in Pottsville

The city of Hazleton is inside the 0.5 mV/m contour of the first adjacent channel station WARD on 1550 kHz in Pittston, Pa.. Although it may be possible to locate a new facility at Pottsville, Pa. the nighttime limit would be 24 mV/m from KXEL, Waterloo, Ia. and because of the proximity to the 0.5 mV/m 50% skywave protected contour of clear channel station KXEL nighttime operation may be difficult.

It should be noted that at the time of the initial analysis both Hazleton and Pottsville, Pa. were inside the 0.025 mV/m contour of co-channel station WARD on 1540 kHz. This station has since changed frequency to 1550 kHz.

LAKE CHARLES, LA 1220 kHz

Possibly usable

It appears that use of 1220 kHz at Lake Charles, La. may be possible; however, it should be noted that the nighttime RSS limit from co-channel station XEB is 27.3 mV/m.

MONROE, LA 1580 kHz

Unusable

The city of Monroe, La. as well as the surrounding area is completely inside the 0.025 mV/m contours of co-channel stations KLVU, Haynesville, La. and WESY, Leland, Ms. on 1580 kHz making this frequency unusable at this location.

ODESSA - MIDLAND, TX 730 kHz

Possibly usable

It appears that use of 730 kHz at Odessa - Midland, Tx. may be possible; however, it should be noted that the nighttime RSS limit from co-channel station XEX is 21.6 mV/m.

ODESSA - MIDLAND, TX 1540 kHz

Unusable in Midland, Possibly usable in Odessa

The use of 1540 kHz is precluded at Midland, Texas by third adjacent channel station KMND at Midland, Texas on 1510 kHz. It may be possible to locate a new station on this frequency at Odessa, Texas.

ODESSA - MIDLAND, TX 1570 kHz

Unusable

The nighttime limit at this location from station co-channel station XERF on 1570 kHz is 102.7 mV/m making this frequency unusable for fulltime service.

WACO, TX 800 kHz

Unusable

The city of Waco, Tx. as well as the surrounding area is completely inside the 0.025 mV/m contour of co-channel station KJMD, Laneville, Tx. on 800 kHz making this frequency unusable at this location.

AMARILLO, TX 1570 kHz

Unusable

The nighttime limit at this location from station co-channel station XERF on 1570 kHz is 112.4 mV/m making this frequency unusable for fulltime service.

FARMINGTON, NM 800 kHz

Unusable

The nighttime RSS limit at this location from station co-channel station XEROK on 800 kHz is 90.4 mV/m making this frequency unusable for fulltime service.

FARMINGTON, NM 900 kHz

Possibly usable

It may be possible to locate a new station at this location; however, it should be noted that it is very near the 0.025 mV/m contour of station KGCA, Del Norte, Co. on 900 kHz and the 0.5 mV/m contour of station NEW (no call sign has been given to this station) at Bernalillo, Nm. on 890 kHz.

FARMINGTON, NM 990 kHz

Unusable

It is not possible to locate a new station at this location on 990 kHz due to the existence of third adjacent channel station KNDN at Farmington, Nm. on 960 kHz.

FARMINGTON, NM 1220 kHz

Possibly usable

It appears that use of 1220 kHz at Farmington, Nm. may be possible.

FARMINGTON, NM 1220 kHz

Possibly usable

It appears that use of 1540 kHz at Farmington, Nm. may be possible; however, nighttime operation will require protection to 0.5 mV/m, 50% skywave contour of co-channel class I-B station KXEL, Waterloo, Ia. and to co-channel class 2 station KMIA, Fort Worth, Texas.

FARMINGTON, NM 1570 kHz

Unusable

The nighttime RSS limit at this location from station co-channel station XERF on 1570 kHz is 70.0 mV/m making this frequency unusable for fulltime service.

JACKSON, TN 1540 kHz

Unusable

The city of Jackson and the surrounding area is completely inside the 0.025 mV/m contour of co-channel station KNNT, Kennett, Mo. on 1540 kHz.

ABILENE, TX 1220 kHz

Unusable

The city of Abilene, Tx. and the surrounding area is completely inside the 0.025 mV/m contour of co-channel station KZEE, Weatherford, Tx. on 1220 kHz.

ABILENE, TX 1580 kHz

Possibly usable

It may be possible to locate a new station at Abilene, Texas, on 1580 kHz; however, it is just outside the 0.025 mV/m contour of co-channel station KRZI, Waco, Tx. on 1580 kHz. It should also be noted that the existing nighttime RSS limit at this location is 28.7 mV/m making nighttime operation questionable.

CHARLOTTESVILLE, VA 1010 kHz

Possibly usable

It appears that use of 1010 kHz at Charlottesville, Va. may be possible.

CHARLOTTESVILLE, VA 1220 kHz

Unusable

The city of Charlottesville, Va. and the surrounding area is completely inside the 0.025 mV/m contour of co-channel station WFAX, Falls Church, Va. on 1220 kHz.

CHARLOTTESVILLE, VA 1540 kHz

Possibly usable

It may be possible to locate a new station at Charlottesville, Va. on 1540 kHz; however, it is very near the 0.025 mV/m contour of co-channel station WKIE, Richmond, Va. on 1540 kHz. In addition, nighttime operation may be difficult due to the protection that will need to be provided to co-channel Class A station ZNS (in the Bahamas) as well as the Class I-B station KXEL, Waterloo, Ia..

CHARLOTTESVILLE, VA 1570 kHz

Possibly usable

It appears that the use of 1570 kHz at Charlottesville, Va. may be possible.

FLORENCE, AL 1540 kHz

Possibly usable

It appears that it may be possible to locate a new station at Florence, Al.; however, it is very near the 0.025 mV/m contour of co-channel station WRSM, Sumiton, Al. which in fact encompasses a significant portion of the area surrounding the city of Florence.

DOTHAN, AL 1220 kHz

Possibly unusable

It appears the it may be possible to locate a new station at Dothan, Al. on 1220 kHz.

DOTHAN, AL 1540 kHz

Possibly usable

It appears the it may be possible to locate a new station at Dothan, Al. on 1540 kHz; however, it is very near the 0.025 mV/m contour of co-channel station WXZE, Sylvester, Ga. on 1540 kHz. It should also be noted that under the current international agreements it is not possible to operate a station at night at this location.

BELLINGHAM, WA 860 kHz

Possibly usable

It appears that it may be possible to locate a new station at Bellingham, Wa. on 860 kHz; however, first adjacent channel stations CFVR, Abbotsford, BC. and KTAC, Tacoma, Wa. on 850 kHz may cause some daytime interference over some of the Bellingham, Wa. market.

PORTSMOUTH, NH 540 kHz

Possibly usable

It appears that it may be possible to locate a new station at Portsmouth, NH. on 540 kHz. PORTSMOUTH, NH 1010 kHz

Unusable

It is not possible to locate a new station at Portsmouth, NH on 1010 kHz due to the extremely high nighttime limit of 71.2 mV/m from co-channel station WINS, New York, NY. on 1010 kHz.

ALBANY, GA 1220 kHz

Unusable

It is not possible to locate a new station at Albany, Ga. due the existence of third adjacent channel station WQDE, Albany, Ga. on 1250 kHz and in addition to this limitation most of the Albany, Ga. area is inside the 0.025 mV/m contour of co-channel station WFST, Thomaston, Ga. on 1220 kHz.

ROSWELL, NM 1050 kHz

Unusable

It is not possible to locate a new station at Roswell, Nm. on 1050 kHz because of the existence of third adjacent channel station KBCQ, Roswell, Nm. on 1020 kHz and the high nighttime limit of 58.7 mV/m from co-channel station XEG on 1050 kHz.

ROSWELL, NM 1540 kHz

Possibly usable

It appears that it may be possible to locate a new station at Roswell, Nm. on 1540 kHz.

ROSWELL, NM 1570 kHz

Unusable

It is not possible to locate a new station at Roswell, Nm. on 1570 kHz due to the extremely high nighttime RSS limit of 117.1 mV/m from co-channel station XERF, on 1570 kHz.

ROSWELL, NM 1580 kHz

Unusable

It does not appear feasible to locate a new station at Roswell, Nm. on 1580 kHz due to the high nighttime RSS limit of 42.2 mV/m fro co-channel station XEDM. MIAMI, FL 690 kHz

Unusable

The city of Miami and the surrounding area are inside the 2.0 mV/m contour of second adjacent channel station WWFE, Miami, Fl. on 670 kHz making 690 kHz unusable at this location.

ALBUQUERQUE, NM 1220 kHz

Unusable

It is not possible to locate a new station at Albuquerque, Nm. on 1220 kHz due to the existence of third adjacent channel station KXKS, Albuquerque, Nm. on 1190 kHz.

ALBUQUERQUE, NM 1540 kHz

Unusable

It is not possible to locate a new station at Albuquerque, Nm. on 1540 kHz due to the existence of second adjacent channel station KAMX Albuquerque, Nm. on 1520 kHz.

ALBUQUERQUE, NM 1570 kHz

Unusable

It is not possible to locate a new station at Albuquerque, Nm. on 1580 kHz due to the existence of first adjacent channel station KZIA Albuquerque, Nm. on 1580 kHz.

HOUSTON, TX 900 kHz

Unusable

The city of Houston, Tx. and the surrounding area are inside the 0.025 mV/m contour of co-channel station XEWB making 900 kHz unusable at this location.

HOUSTON, TX 1570 kHz

Unusable

It is not possible to locate a new station at Houston, Tx. on 1570 kHz due to the existence of second adjacent channel station KYOK, Houston, Tx. on 1590 kHz.

PHOENIX, AZ 800 kHz

Unusable

It is not possible to locate a new fulltime station at Phoenix, Az. on 800 kHz due to the high nighttime limit of 91.6 mV/m from co-channel station XEROK.

CORPUS CHRISTI, TX 800 kHz

Unusable

It is not possible to locate a new fulltime station at Corpus Christi, Tx. on 800 kHz due to the high nighttime limit of 57.4 mV/m from co-channel station XEROK.

DALLAS, TX 1570 kHz

Unusable

It is not possible to locate a new fulltime station at Dallas, Tx. on 1570 kHz due to the high nighttime limit of 117.2 mV/m from co-channel station XERF and the fact that the city of Dallas and the surrounding area are inside the 0.025 mV/m contour of co-channel station KTER, Terrell, Tx. on 1570 kHz.

AUSTIN, TX 800 kHz

Unusable

It is not possible to locate a new fulltime station at Austin, Tx. on 800 kHz due to the high nighttime RSS limit of 68.7 mV/m from co-channel station XEROK.

FOOTNOTES

[1] Comments were filed by the Association of Broadcast Engineering Standards (ABES), Corporation for Public Broadcasting (CPB), Robert A Jones, National Public Radio (NPR) and National Association of Broadcasters (NAB). Reply comments were filed by ABES, Lawrence Bloomfield, CPB, and National Black Media Coalition (NBMC).

[2] 2 FCC Rcd. 4884 (1987); 52 Fed. Reg. 31,432 (August 20, 1987).

[3] The *Further Notice* was issued in response to a remand from the Second Circuit United States Court of Appeals in *National Black Media Coalition v. F. C. C.*, 791 F. 2d 1016 (2d Cir. 1986). The reasons for the remand are discussed below in paragraph 5.

[4] 49 Fed. Reg. 18567, May 1, 1984.

[5] The North American Regional Broadcasting Agreement (NARBA) designated 540, 690, 740, 860, 990, 1010, and 1580 kHz as Canadian Class I-A clear channels. NARBA also designated 1540 kHz as a Bahamian Class I-A clear channel. The U.S./Mexican Agreement of 1968 designated 540, 730, 800, 900, 1050, 1220, and 1570 as Mexican Class I-A clear channels. Since 540 kHz was designated as a Class I-A clear channel for both Canada and Mexico, the total number of channels involved is 14.

[6] In fact, the 1968 U.S./Mexican bilateral AM agreement precluded the nighttime use of the Mexican Class I-A Clear Channels anywhere in the United States, and the North American Regional Broadcasting Agreement (NARBA) precluded the nighttime use of the Bahamian or Canadian Class I-A Clear Channels anywhere within 650 miles of the country having the preference on the channel.

[7] In 1985, in MM Docket No. 85-39, the Commission proposed the deletion of the non-technical AM application acceptance criteria for the 25 U.S. Class I-A channels set forth in Section 73.37(e) of the Rules. *See Deletion of AM Application Acceptance Criteria, Notice of Proposed Rule Making* 50 Fed. Reg. 8169, February 28, 1985. There were originally three non-technical acceptance criteria : areas where 25% of the population to be served by the applicant had no aural service; areas where the applicant would provide the first or second aural service and where there was no FM station; and areas where 20% of the community to be served by the applicant had fewer than two daytime aural services and no FM service. In 1980, we amended Section 73.37(e) to permit applications by minorities and non-commercial broadcasters on the 25 Class I-A clear channels; consequently minorities and non-commercial stations became the fourth and fifth non-technical acceptance criteria. (*See Report and Order* in Docket 20642, 78 F.C.C. 2d 1345 (1980), recon. denied 83 F.C.C. 2d 216 (1980)). After carefully reviewing the need for imposing AM non-technical criteria on applicants for AM licenses, the Commission removed these criteria on the basis they were no longer necessary to serve the public interest. *Deletion of AM Application Acceptance Criteria, Report and Order*, 102 F.C.C. 2d 548 (1985). *See* para. 6 *infra*. A petition for reconsideration of this decision, filed by National Black Media Coalition, is currently pending.

[8] The main study involved plotting the daytime service and interfering contours of existing daytime-only and full-time stations on a number of the affected channels to establish the extent to which existing uses would preclude the establishment of new stations. These studies, which were based on co-channel and first adjacent channel considerations, showed that in much of the country it would not be possible to establish a new station consistent with the applicable rules regarding prohibited contour overlap.

[9] 101 F.C.C. 2d 1 (1985); 50 Fed. Reg. 24,515 (June 11, 1985).

[10] Maximum power was limited to 500 watts during this five year period in order to limit the effects of such impact.

[11] During the pendency of the appeal, two parties filed petitions for reconsideration of the Commission's decision. Neither petition was directed to the issues raised by NBMC. Rather, they dealt with minor peripheral provisions not involved in the appeal. These matters have been fully resolved and are no longer before the Commission. *See Memorandum Opinion and Order*, 103 FCC 2d 532 (1986); 52 Fed. Reg. 21308 (June 5, 1986).

[12] In particular, the Court expressed concern over the adoption of rules that differed sharply from those originally proposed, especially when the Commission's decision was based on studies on which the public did not have an opportunity to comment. 791 F. 2d 1016, 1022-23 (1986). The Court did not reach NBMC's claim that there was inadequate evidence to support the Commission's decision. *See id.* at 1020 at n. 2.

[13] In that docket, the Commission acknowledged that the criteria had been instrumental in increasing AM service to unserved and underserved areas during the early stages of the development of the AM service. Because the AM service had significantly matured and FM service had now become widely available, it concluded that these particular criteria were no longer necessary to funnel AM growth to these areas. It therefore determined that the public interest would be better served by permitting the filing of applications for any location so long as applicable interference criteria were met, and, on this basis, it deleted these acceptance criteria. Because there were so few remaining areas outside of unserved or underserved areas where new AM stations could be established, it concluded that the acceptance criteria relating to applications filed by minorities and non-commercial entities would not increase ownership by these interests in any meaningful way and thus their retention would serve no significant purpose.

[14] These studies differ in two respects from the earlier studies. First, they encompass all 14 channels. More importantly, they have taken into account the second and third adjacent channel stations as well as the co- channel and first adjacent channel stations included in the original studies. In essence, they depict the pertinent groundwave contours for all co-channel and first adjacent channel stations which an applicant would have to protect. The location of second and third adjacent channel stations was depicted by the placement of larger and smaller asterisks, respectively.

[15] CPB has provided a list of radio markets where it says public radio service is lacking and where it claims one or more foreign clear channels could be used. As we explain later, *see infra* para. 14, we have reviewed CPB's assertions and in general have determined they are not well founded.

[16] In particular, NPR questions the Commission's use of the Commission's conductivity map, FCC Figure M3 Estimated Effective Ground Conductivity in the United States, in making these studies. It points out that the Commission has issued a *Notice of Inquiry in MM Docket 87 - 267*, 2 FCC Rcd. 5014 (1985), inviting comment on various changes in the AM technical standards including possible revision of Figure M3 to take into account, for example, additional conductivity data from measurements made in connection with filings with the Commission. At this early stage of the proceeding, however, it is not possible to identify what changes in the Commission's rules might be proposed, much less adopted. Because reexamination of technical standards in this area has only recently begun and because the process of reviewing them is likely to extend over a number of years, we believe it would be inappropriate for us to delay resolution of this proceeding pending the outcome of that inquiry and any ensuing rule makings. Until these new standards are adopted, we see no reason to deviate from using the existing standards as long as they continue to be capable of achieving their intended purposes. *See infra* para. 16. The same holds true for the other areas of the technical standards which NPR mentioned as possibly relevant to this proceeding.

[17] The NBMC plan would allow any qualified person to file a "lead" application. That application would go out on public notice for 30 days during which time any minority of noncommercial applicant could file a mutually exclusive application. If no competing application were filed within 30 days, a second public notice and cut-off period would be established during which any qualified applicant could apply.

[18] *See* note 7 *supra*.

[19] Section 73.37(a) sets the proscriptions related prohibited overlap from a proposed station with the 0.5 mV/m, 0.25 mV/m, 2 mV/m, and 25 mV/m contours of existing stations.

[20] Where a directional antenna is required, there is the additional need to be able to obtain an acceptable antenna site where the required antenna can be located and provide satisfactory service to the market.

[21] The RSS limit is the nighttime service contour to which a station is limited as a result of skywave interference from existing co-channel stations. A station that has a RSS limit of 50 mV/m, for example, would not provide reliable service at distances beyond the location of the station's 50 mV/m contour.

[22] This means that the proposed station's 0.5 mV/m contour cannot overlap the 0.5 mV/m of a first adjacent channel station or the 0.025 mV/m contour of a co-channel station. Likewise, the proposed station's 0.025 mV/m contour cannot overlap the 0.5 mV/m of a co-channel station. In addition, the rules preclude overlap of the 2 mV/m and 25 mV/m contours of second adjacent channel stations and the overlap of 25 mV/m contours for third adjacent channel stations. All of these factors restrict the area in which a station could be located, requiring it to be set back from the cross-hatched areas or the places where the second and third adjacent stations are located. Additionally, the preclusionary effect varies depending on ground conductivity and the station's directional pattern, if any.

[23] As noted above, proposed stations would have to be some distance removed from cross-hatched areas to avoid prohibited contour overlap. As a result a number of the smaller open areas would still not be large enough to accommodate a new full-time station. Even the larger (but still limited) open areas shown on the maps might not be large enough to avoid these technical difficulties.

[24] *See TV 9, Inc. v. FCC*, 495 F.2d 929 (D.C. Cir. 1973); G arr ett v. FCC, 513 F.2d 1056 (D.C. Cir. 1975) and WPIX, Inc., 68 FCC 2d 381, 411-12 (1978).

[25] Pub. Law 100-202 signed by the President on December 22, 1987.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. I-T-C-88-072

Application for authority under Section 214 of the Communications Act of 1934, as amended, to acquire and operate capacity in a digital submarine cable system between and among Hong Kong, Japan and Korea.

MEMORANDUM OPINION, ORDER AND AUTHORIZATION

Adopted: May 27, 1988; Released: June 7, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On January 21, 1988, the American Telephone and Telegraph Company (AT&T) filed an application with the Commission requesting authority pursuant to Section 214 of the Communications Act of 1934, as amended, to: 1) acquire and operate capacity in a digital submarine cable system, the H-J-K cable system, between and among Hong Kong, Japan and Korea; 2) acquire by lease connecting facilites necessary to extend acquired capacity to points in Hong Kong and Korea; and 3) activate capacity according to its circuit activation plan. The application was placed on public notice February 19, 1988. No comments were received.

DESCRIPTION OF PROPOSED FACILITIES

2. The proposed H-J-K cable system is planned to be in service in in May 1990. The system will extend between landing points at the existing cable station at Deep Water Bay, Hong Kong; the existing cable station at Chikura, Japan; and a new cable station to be constructed at Cheju, Korea. The H-J-K system will be connected in Hong Kong, Japan and Korea with the respective domestic networks in those countries and territories. The cable will be extended by suitable facilities to the borders of other countries, including the United States, or to the terminals of other international communications systems, including other cable terminals and satellite earth stations. AT&T currently serves these points via satellite circuits acquired from Comsat and existing submarine cable facilities.[1]

3. The H-J-K cable system is divided into four segments. Segment A consists of the cable station at Deep Water Bay, Hong Kong. Segment C consists of the cable station at Chikura, Japan. Segment D consists of the cable station to be constructed at Cheju, Korea. Segment B consists of two working optical fiber pairs: one between Chikura, Japan and Cheju, Korea and one between Chikura, Japan and Deep Water Bay, Hong Kong; including the associated nominal 140 Mbit/s digital input/output ports at the Segment A, Segment C and Segment D cable systems. Segment B, in turn, is comprised of three subsegments: Subsegment B1, that part of Segment B between the branching unit located between the three landing points and the associated nominal 140 Mbit/s digital input/output ports at Deep Water Bay, Hong Kong (inclusive), Subsegment B2, that part of Segment B between the branching unit, including said branching unit, and the associated nominal 140 Mbit/s digital input/output ports at Chikura, Japan (inclusive), and Subsegment B3, that part of Segment B between the branching unit and the associated nominal 140 Mbit/s digital input/output ports at Cheju, Korea (inclusive). The maximum capacity of this system is provided in four 140 Mbit/s streams, two in each optical fiber pair. Each 140 Mbit/s stream contains 1890 Minimum Assignable Units of Ownership (MAUOs).[2] For voice telephone requirements, digital circuit multiplication systems (DCMS) can be applied to derive five voice paths from each MAUO.

4. AT&T will utilize the capacity in the H-J-K cable to provide its authorized services to Hong Kong and Korea.[3] Use of the system by other U.S. carriers, and the provision of service to countries which do not have an ownership interest in the cable, will be accommodated through assignment of additional capacity to the terminal-country owners beyond their requirments. AT&T states that there will be sufficient capacity available in the intitial years of service to accommodate the needs of these users. Capacity will be conveyed by the terminal-country owners to non-owners on an Indefeasible Right of User (IRU) basis. The Construction and Maintenance Agreement (C&MA) contains a provision permitting the assignment of capacity in the H-J-K between co-owners and others.

5. According to AT&T, the estimated cost for the H-J-K submarine cable portion is170.5 million. The costs for the cable stations are estimated as follows:2.4 million for the cable station at Hong Kong;2.9 million for the Korean station; and9.6 million for the cable station at Japan. This results in total estimated capital costs of185.4 million for the H-J-K cable system. About ninety per cent of the system cost will be on a fixed price basis. This includes items such as the cable, cable laying, the repeaters, the branching unit, the terminal transmission equipment and the high voltage power plant. The remaining ten per cent will be on a cost-incurred basis. This includes items such as the route survey, owners' inspection and amounts payable for customs duties and value added taxes. AT&T is a subcontactor to Fujitsu Limited for the H-J-K cable system and will provide components and services representing approximately76.3 million, or 47 per cent of the total cost,162.35 million, of the Fujitsu Limited supply contract.

DISCUSSION

6. The issues concerning the need for and timing of facilities in the Pacific Ocean Region (POR) during the 1987-1995 period have been considered exhaustively in Phase II of the comprehensive planning process. In the Phase II *Report and Order*, the Commission concluded that the public interest would be served by the introduction of a fiber optic cable in the POR as early as 1988.[4] The Commission expressed a preference for the ring configuration described in Plan II-A (Mod. 4). Under Plan II-A (Mod. 4), the cable system will extend from the U.S.

mainland to Hawaii, (Hawaii-4/Transpac-3 (HAW-4/TPC-3) cable system to be introduced in 1988), continue via a branching unit to Guam and the Philippines (Guam-Philippines (GP-2) cable to be introduced in 1989) and then extend from the Philippines linking Hong Kong, Korea and Japan in 1990 or later. The Commission found that the ring design would allow the cable to be self-restoring, in whole or in part, west of the branching unit.[5] For example, this configuration provides the Department of Defense (DoD) with alternative routing arrangements for connecting Guam with other locations in the Far East.[6] With a ring configuration, the loss of any one segment will not totally disrupt communications beyond that point.

7. The Commission has already approved the construction and operation of capacity by AT&T and other U.S. carriers in the HAW-4/TPC-3 and GP-2 cable systems.[7] Since the H-J-K cable system is an integral part of Plan II-A (Mod. 4), AT&T's proposal to acquire and operate capacity in the H-J-K Cable System is consistent with the objectives underlying the Commission's conclusions in the *Report and Order*.

8. AT&T proposes to acquire, on an ownership basis, a one-half interest in 150 MAUOs in the Japan-Hong Kong fiber pair and a one-half interest in 540 MAUOs in the Japan-Korea fiber pair. The international telecommunications entities in Hong Kong and Korea will own the remaining one-half interest in these MAUOs.[8] According to Schedules B, C-1 and C-2 of the C&MA, AT&T will bear approximately 7.7 per cent,[9] or approximately 14.2 million,[10] of the capital, maintenance and operating costs of the H-J-K system as a result of its acquisition of one-half interests in the 690 MAUOs. AT&T will also pay4 million of the interest accrued during construction.

9. In supplemental information filed May 9, 1988, AT&T indicated that170.5 million includes only the cost of the underseas portion of the H-J-K cable system. The14.9 million capital cost of the cable terminals in Japan, Hong Kong and Korea must be added in order to reflect the185.4 million total capital cost of the cable system. AT&T calculates its share of the total costs of the cable system as 7.7 per cent of the185.4 million, or approximately14.2 million. However, we note that, according to both the C&MA and Attachment E to AT&T's application, AT&T will acquire capacity only in the Japan cable terminal. Adding the1.6 million capital cost for its share of land and buildings in the Japan cable terminal to the 13.1 million for AT&T's share of the capital costs of the underseas portion of the cable system yields a total capital cost to AT&T of approximately 14.7 million. This figure is not too far out of line with AT&T's estimated cost of14.2 million.

10. With respect to capacity above the notional capacity of each fiber pair, subparagraph 12(a) of the C&MA provides that the H-J-K Management Committee may increase the notional capacity of a given fiber pair once the available underwritten capacity[11] held by the terminal parties has been disposed of.[12] In the event of an increase in the notional capacity, subparagraph 12(a) calls for the modification of Schedules B, C-1, C-2 and D and the establishment of terms and conditions for this expanded capacity by the Management Committee. However, in its supplemental filing, AT&T indicates that there is an informal agreement among the system owners with regard to increases in notional capacity. Under this agreement, the owner acquiring the expanded capacity would pay a unit price based on the increased notional capacity, and the remaining owners would receive a payment based upon the reallocation of costs resulting from the increased notional capacity. The unit price for the additional notional capacity would be subject to possible adjustments for depreciation, cost of money and the like.

11. In its application, AT&T did not provide an updated forecast of circuit requirements to Hong Kong and Korea. It did include, however, as Attachment G, its projected activation of message circuits on the H-J-K cable at year-end 1995.[13] AT&T projects that it will activate 1300 message voice paths on the Japan-Korea fiber pair by year-end 1995. Assuming that DCMS equipment will provide a 5 to 1 multiplication ratio, AT&T would be utilizing 260 MAUOs in the Japan-Korea fiber pair at year-end 1995 for the provision of telephone message service. Thus, AT&T projects that it will utilize approximately 48 per cent of the total capacity it proposes to acquire in the H-J-K cable for use with Korea for message telephone service in the first five years of the projected 25 year lifetime of the cable system.

12. With respect to Hong Kong, Attachment G indicates that AT&T projects activation of 298 message voice paths to Hong Kong via the H-J-K cable by year-end 1995. Again, assuming DCMS equipment provides a 5 to 1 multiplication ratio, AT&T would be using 60 MAUOs in the Japan-Hong Kong fiber pair for the provision of message telephone service at year-end 1995. Thus, AT&T projects it will use 40 per cent of the capacity it seeks to acquire in the H-J-K cable for use to Hong Kong in the first five years of the projected 25 year lifetime of that facility.[14]

13. We conclude that grant of AT&T's application to acquire and operate capacity in the H-J-K cable system is in the public interest. By interconnecting with optical fiber suomarine cable systems previously authorized by the Commission, the H-J-K cable will extend lightwave technology throughout the POR, permitting interconnection with rapidly-developing global digital network. The extension of this technology within the POR will promote intermodal and intramodal competition, technological development and customer choice. This will create incentives for more efficient operations and will provide service quality benefits in terms of path diversity, media diversity and restoration capability. In addition, authorization of AT&T's participation in the H-J-K cable is consistent with the objectives of Plan II-A (Mod. 4), including satisfying DoDs needs for alternative routing arrangements.

14. Accordingly, IT IS ORDERED that application File No. I-T-C-88-072 IS GRANTED, and AT&T is authorized to:

1) acquire and operate with CWHK one-half interest in 150 MAUOs in the Japan-Hong Kong fiber pair and one-half interest with KTA in 540 MAUOs in the Japan-Korea fiber pair of the H-J-K Cable System; and

2) acquire by lease such connecting facilties as may be needed to extend the capacity to be acquired in the H-J-K Cable System to Hong Kong and Korea.

15. IT IS FURTHER ORDERED, that the Commission retains jurisdiction to reallocate AT&T's interest in capacity authorized herein, as the public interest may require to accommodate additional carriers or otherwise, with, when

required, the concurrence of the foreign administration or carriers concerned, and further, jurisdiction is retained by the Commission over all matters relating to ownership, management, maintenance and operation of cable systems as authorized herein, to assure the most efficient use not only of these cable systems but of all means of communication between the U.S. and the POR.

16. IT IS FURTHER ORDERED, that the Commission retains the jurisdiction to review the DCMS, multiplexing and interworking arrangements and attribution of costs thereof and to require such changes in the provision of these services and equipment as may be necessary.

17. IT IS FURTHER ORDERED, that AT&T shall not dispose of any authorized interest or capacity in the H-J-K cable system without prior authorization by the Commission.

18. IT IS FURTHER ORDERED, that AT&T shall include the H-J-K cable system in its monthly Circuit Status Reports filed pursuant to the Commission's Orders. These reports shall be filed no later than the 20th day of each month providing the information for the preceding month.

19. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Gerald Vaughan
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Transpacific submarine cable facilities used to provide these services consist of capacity in the following cables: HAW-1, HAW-2, HAW-3 TPC-1, TPC-2, ANZCAN, OLUHO, OKINAWA and JAPAN-KOREA.

[2] A MAUO is defined in the Construction and Maintenance Agreement (C&MA) as a unit of ownership designated as the minimum, practical unit of ownership, consisting of 73,684.656 bits per second. A MAUO consists of 64,000 usable bits per second and the additional 9,684.656 bits per second required for multiplexing purposes.

[3] The C&MA indicates that the following United States International Serivce Carriers intend to be parties to the H-J-K cable system : FTC Communications Inc., Hawaiian Telephone Company, ITT World Communications Inc., MCI International, Inc., RCA Global Communications, Inc., TRT Telecommunications Corporation, US Sprint Communications Company, and the Western Union Telegraph Company. We have received applications from MCI and TRT to acquire and operate capacity in the H-J-K cable system. We will act on these applications separately.

[4] Pacific Planning, 102 FCC 2d 353, 355 (1985).

[5] *Id.* at 366.

[6] *See* DoD comments in Pacific Telecom Cable, Inc., File No. I-S-C-L-86-002, Mimeo No. 2894 (released Apr. 22, 1987).

[7] Memorandum Opinion, Order and Authorization, File No. I-T-C-85-219, Mimeo No. 1794 (released Jan. 7, 1986).

[8] Under the terms of the C&MA, AT&T will acquire the entire interest in the portion of the Japan cable terminal associated with the 690 MAUOs in which it proposes to acquire half interests. AT&T will not acquire any interst in the portions of the Hong Kong and Korea cable terminals associated with those MAUOs.

[9] This percentage is based on a "notional capacity" of 1890 MAUOs in each of the Japan-Hong Kong and Japan Korea fiber pairs. AT&T defines notional capacity as the number of units of capacity actually subscribed to in a cable system. The notional capacity is typically less than the design capacity of a cable. According to AT&T, notional capacity "is a concept used to determine the unit price of capacity and to allocate costs." Under this concept, the unit price of capacity is determined by dividing the total cost of the appropriate segment of the cable by the notional capacity of that segment. In previous cables we have authorized, the unit price of capacity was determined by dividing the total cost of a segment by its design capacity. We have no objection to the use of notional capacity in calculating unit price. In this instance, the cost of a MAUO in the Japan-Hong Kong and Japan-Korea fiber pairs is determined by dividing the total costs associated with each of those segments by each segment's notional capacity of 1890 MAUOs. Because the 1890 MAUO notional capacity of each fiber pair is exactly one-half of the 3780 MAUO design capacity of each fiber pair, AT&T and each of the other co-owners are in effect, paying for twice the number of MAUOs they will actually acquire in each pair.

[10] Footnote 2 of Schedule B of the C&MA indicates that the calculation of the capital costs of the subsegments of the H-J-K cable system is based on half-MAUO capital costs of28,800 for the Japan-Hong Kong fiber pair, and 16,300 for the Japan-Korea fiber pair. Multiplying these half-MAUO costs by 2 and then by the 1890 notional capacity of each fiber pair, yields a total capital cost of approximately170.5 million. Using these per half-MAUO costs, AT&T's acquisition of the proposed half interest in the 150 MAUOs in the Japan-Hong Kong fiber pair and 540 MAUOs in the Japan-Korea fiber pair would cost approximately13.1 million or 7.7 per cent of the 170.5 million capital cost of the cable.

[11] Underwritten capacity is capacity held by the terminal parties, Kokusai Denshin Denwa Co., Ltd (KDD) of Japan, Korea Telecommuications Authority (KTA) and Cable and Wireless (Hong Kong) Limited (CWHK), for use by entities which are not parties to the C&MA. Schedule D of the C&MA indicates that KDD and CWHK will jointly underwrite 911 MAUOs in the Japan-Hong Kong fiber pair and KDD and KTA will jointly underwrite 589 MAUOs in the Japan-Korea fiber pair.

[12] Subparagraph 12(a) of the C&MA permits the temporary use of capacity above the notional capacity for restoration or the provision of occassional services in accordance with procedures to be determined by the H-J-K Management Committee.

[13] AT&T describes Attachment G as a circuit activation plan and requests that it be approved. However, since the Commission no longer specifies circuit distribution guidelines for any United States carriers, *see* Report and Order, CC Docket No. 87-67, FCC 88-122 (released Apr. 14, 1988), there is no reason for us to approve AT&T's circuit activation plan. Nevertheless, we do find it to be a useful indicator of AT&T's proposed use of the H-J-K cable capacity it seeks authority to acquire.

[14] We note that the C&MA for the HAW-4/TPC-3 cable system indicates that AT&T jointly owns 573 MAUOs in those cables with KTA. This exceeds the capacity AT&T seeks to aquire in the Japan-Korea fiber pair by 33 MAUOs. AT&T states that it is engaged in discussins with other carriers for the purpose of transferring AT&T's interest in 33 of the AT&T-KTA jointly owned HAW-4/TPC-3 MAUOs. We also note that CWHK is not an owner of the HAW-4/TPC-3 cable systems and does not currently hold any capacity in those cables on an IRU or other basis.

However, AT&T states, "CWHK is expected to acquire appropriate interconnecting capacity in the HAW-4/TPC-3 cable systems either on an IRU basis, or, if additional owners are brought into the cable system, on an ownership basis, to correspond with 150 AT&T and CWHK jointly assigned MAUOs in the H-J-K cable system."

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT INTERNATIONAL, INC. File No. I-T-C-88-104

Application for authority to acquire and operate facilities for service to the Netherlands and beyond

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On April 1, 1988, TRT International, Inc. (TRTI) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to acquire and operate facilities for direct service to the Netherlands. The application was placed on public notice on April 13, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to the Netherlands by TRTI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-104 IS GRANTED, and TRTI is authorized to:

a. lease and operate four voice-grade circuits between the TAT-6 cablehead at Green Hill, Rhode Island and TRTI's New York operating office;

b. lease and operate a one-half interest in four voice-grade circuits between the St. Hilaire, France terminal of the TAT-6 cable and the border of the Netherlands;

c. lease four voice-grade half-circuits in TAT-6 cable from TRT Telecommunications Corporation on a cost flow-through basis; and

d. use said facilities, in conjunction with the matching facilities provided by the Netherlands PTT, to provide TRTI's regularly authorized services between the U.S. and the Netherlands and beyond.

3. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between TRTI and its correspondent in the Netherlands, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

4. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

5. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS COMPANY — File No. I-T-C-88-098

Application for authority to acquire and operate facilities for service to Thailand

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On March 23, 1988, US Sprint Communications Company (US Sprint), filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite facilities for provision of direct service to Thailand. The application was placed on public notice on April 6, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Thailand by US Sprint.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-098 IS GRANTED, and US Sprint is authorized to:

a. lease from Comsat and operate sixteen voice-grade satellite circuits between US Sprint's earth station at San Ramon, California and an appropriate satellite over the Pacific Ocean connecting with similar circuits between the satellite and an earth station in Thailand furnished by US Sprint's correspondent in Thailand; and

b. use said facilities to provide US Sprint's regularly authorized services between the U.S. and Thailand and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between US Sprint and its correspondent in Thailand, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELCOR, INC. dba TMC OF LOUISVILLE — File No. I-T-C-88-101

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Acting Chief, International Facilities Division:

1. On March 25, 1988, Telcor, Inc. dba TMC of Louisville (Telcor) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 6, 1988. No comments were received.

2. Telcor, a Georgia corporation, is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by Telcor.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-101 IS GRANTED and Telcor is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC Nos. 1 and 2, MCI Telecommunications Corp.'s Tariff FCC No. 1, US Sprint's Tariffs FCC Nos. 1 and 2, and Satellite Business System's Tariff FCC No. 4, between the contiguous U.S., Hawaii, Puerto Rico and the U.S. Virgin Islands, on the one hand, and those points listed in those tariffs on the other hand.

5. Copies of any operating agreements entered into between Telcor and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that Telcor shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ADVANTAGE NETWORK, INC. File No. I-T-C-88-099

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On March 23, 1988, Advantage Network, Inc. (ANI) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 6, 1988. No comments were received.

2. ANI, a Tennessee corporation, is a start-up company which proposes to resell international switched voice services in competition with other carriers already providing resale of such service. ANI has filed the information required by the Commission pursuant to Section 63.01 of its Rules. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by ANI.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-099 IS GRANTED and ANI is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC Nos. 1 and 2, MCI Telecommunications Corp.'s Tariff FCC No. 1, and US Sprint's Tariffs FCC Nos. 1 and 2, between the United States, on the one hand, and Canada and Mexico and those points listed in those tariffs on the other hand.

5. Copies of any operating agreements entered into between ANI and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that ANI shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 CFR Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COM-LINK 21, INC. File No. I-T-C-88-097

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On March 18, 1988, Com-Link 21, Inc. (Com-Link) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on April 6, 1988. No comments were received.

2. Com-Link, a Missouri corporation, is already providing domestic resale services. It now proposes to resell international switched voice services in competition with other carriers already providing resale of such service. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by Com-Link.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-097 IS GRANTED and Com-Link is authorized to provide international switched voice services by the resale of the international switched voice services set forth in AT&T's Tariffs FCC Nos. 1 and 2, between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between Com-Link and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that Com-Link shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203 and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for the services authorized in this order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMPUTE-A-CALL, INC. File No. I-T-C-88-095

Application for authority to operate as an international resale carrier

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On March 15, 1988, Compute-A-Call, Inc. (CAC) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to resell the switched message telephone services of existing carriers to provide international switched voice service between the U.S. and various overseas points. The application was placed on public notice on March 30, 1988. No comments were received.

2. CAC, a Missouri company, is a start-up company which proposes to resell international switched voice services in competition with other carriers already providing resale of such service. CAC has filed the information required by the Commission pursuant to Section 63.01 of its Rules. In recent authorizations of new entrants, the Commission has recognized that increased competition in international markets is beneficial.[1] We find that the market will support additional carriers and that the added competition will be in the public interest.[2]

3. For the foregoing reasons, IT IS CERTIFIED that the present and future convenience and necessity require the provision of international switched voice services to the general public by CAC.

4. Accordingly, IT IS ORDERED that application File No. I-T-C-88-095 IS GRANTED and CAC is authorized to provide international switched voice services by the resale of the international switched voice services set forth in MCI Telecommunications Corp.'s Tariff FCC No. 1, and United States Transmissions Systems, Inc.'s Tariff FCC No. 2, between the United States and those points listed in those tariffs.

5. Copies of any operating agreements entered into between CAC and its correspondents shall be filed with the Commission within 30 days of their execution.

6. IT IS FURTHER ORDERED that CAC shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. Section 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* the cases cited in Teltec Saving Communications Co., Mimeo No. 3548, (released April 4, 1986) at n. 2.

[2] FCC v. RCA Communications, Inc., 346 U.S. 86 (1953); Mackay Radio and Telegraph Co., 28 FCC 231 (1960).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-88-102

Application for authority to acquire and operate facilities for service to Finland and beyond

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: May 27, 1988 **Released: June 7, 1988**

By the Chief, International Facilities Division:

1. On March 30, 1988, MCI Telecommunications Corporation (MCI) filed an application with the Commission requesting authority, pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate satellite and connecting facilities for direct service to Finland. The application was placed on public notice on April 13, 1988. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service to Finland by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-88-102 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate sixteen voice-grade satellite circuits between an appropriate earth station on the east coast of North America and an appropriate satellite over the Atlantic Ocean, connecting with similar circuits between the satellite and an earth station in Finland furnished by MCI's correspondent in Finland;

b. lease from AT&T and operate sixteen voice-grade circuits in the appropriate east coast earth station;

c. lease and operate sixteen voice-grade circuits between the east coast earth station and MCI's West Orange, New Jersey operating center; and

d. use said facilities to provide MCI's regularly authorized services between the U.S. and Finland and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to insure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in the Finland, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This authorization is effective on its release date and shall be continued year-to-year, unless the Commission notifies the applicant to the contrary and requires a new application to be filed. If the Commission requires a new application to be filed, the authorization will continue in effect until Commission action on the application.

6. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1

In the Matter of

Annual 1988 Access Tariff Filings
Phase II

ERRATUM

Released: June 7, 1988

By the Chief, Common Carrier Bureau:

1. On May 17, 1988, the Chief of the Common Carrier Bureau adopted an Order Designating Issues for Investigation in the above-captioned proceeding. *Annual 1988 Access Tariff Filings,* CC Docket No. 88-1, Phase II, DA 88-735, released May 20, 1988. The following amendment has been made in that Order.

Attachment C, pg. 4 of 4, "1988," "Interstate Conversation Minute Factor," should read, "Interstate Conversation Minute Miles Factor."

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-611

In the Matter of

AT&T Communications — Transmittal Nos. 1063 and 1064

Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 1988; Released: June 7, 1988

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. On November 17, 1987, AT&T Communications (AT&T) filed the captioned revisions to be effective January 1, 1988. Under Transmittal No. 1063, as modified by Transmittal No. 1096, AT&T implemented rate structure changes and a reduction in rates for its switched services of approximately 772 million, to flow through rate reductions for switched access services.[1] AT&T proposed non-uniform reductions in its domestic Message Telecommunications Service (MTS) usage rates, lowering the full daytime usage rates while making reductions in the evening and night/weekend discounts from 38 and 53 percent, respectively, to 35 and 50 percent. The combined effect of these changes was a reduction in usage rates for all periods, with the largest reductions in daytime rates. AT&T also proposed a variety of revisions to the relationships among rates for its switched services, proposing larger rate reductions for other services such as WATS, 800 Service, and Megacom. Finally, AT&T proposed revisions to its state-by-state gross receipts tax flow-through. Transmittal No. 1064, as modified by Transmittal No. 1097, revised AT&T's private line rates to reflect corresponding changes in the local exchange carriers' (LECs') special access rates.

2. In our *December 30 Order*, we found that in view of the fact that the AT&T filing for switched services represented rate reductions reflecting the reduction in the access rates AT&T pays to local telephone companies, suspension or rejection of the transmittals clearly would not serve the public interest. On the other hand, we found that the support material filed with AT&T's tariff revisions was "so perfunctory and lacking in explanation and justification for its proposed rate levels and changes in rate relationships that we have found it impossible to assess, from the filing, whether AT&T's rates will be reasonable."[2] In addition, we noted that AT&T was required to implement many Commission rule changes, but provided no information regarding those matters and no justification for the specific rate changes it proposed. Accordingly, we initiated this investigation to obtain more information and to provide a more meaningful opportunity for comment. We required AT&T to file information equivalent to that provided by the LECs with their 1988 access tariff filings. We also directed AT&T to file information it had previously provided to the Bureau on a proprietary basis.[3]

3. AT&T filed its direct case on January 28, 1988, US Sprint (Sprint) filed an opposition on February 12, 1988, and AT&T replied on February 26, 1988. We have examined the direct case and the responsive pleadings. We conclude that AT&T's projected billing and collection expenses warrant further investigation, but that other rate and rate structure questions do not warrant further investigation.

II. SUMMARY OF DIRECT CASE

4. In its direct case, AT&T argues that the costs it incurs are presumed to be prudent.[4] AT&T further states that its costs must be prudent because it now faces intense competition in all of its interexchange services.[5] AT&T also argues that it has no obligation to reduce 1988 rates to reflect refunds of access charges required by the Commission's Part 65 rules. AT&T argues that in light of a recent Court of Appeals decision relating to the Part 65 rules,[6] there is no longer any basis to investigate how AT&T should treat such refunds in its 1988 rates.[7] In any case, AT&T contends, these refunds reflect earnings associated with prior periods, and as long as AT&T had underearnings in those periods, the refunds should not be applied to the current period.[8]

5. AT&T also argues that it could not implement an across-the-board flow-through of the access rate reductions because of intense competition for MTS business day traffic.[9] AT&T claims that the Commission has already scrutinized its rate structures and found them to be reasonable, and that the revisions in this transmittal did not fundamentally alter those rate structures.[10] It has previously made non-uniform rate reductions and adjustments to the discount levels, AT&T claims. According to AT&T, its day period rates contribute disproportionately to the recovery of non-traffic sensitive (NTS) costs and this disproportionate contribution justifies application of the bulk of NTS cost savings to the day period rates. AT&T also alleges that the reduction in discounts keeps all MTS rates lower than they otherwise would be.[11]

6. AT&T says that reductions in its WATS and 800 Service usage rates are necessary to maintain the existing relationships between these services and other cross-elastic switched services, such as Custom Switched Network Service and AT&T Megacom Service. According to AT&T, maintaining these cost relationships has been acknowledged by the Commission as not inconsistent with prior decisions.[12] AT&T also alleges that the rate revisions for the recently introduced switched services were necessary to maintain the existing price relationships between those services.[13] Finally, AT&T says that its restructuring of International Plus, PRO America, Custom Switched Network Service, Megacom 800 and 800 ReadyLine was a legitimate response to service offerings of AT&T's competitors.[14]

7. Attachment 1 of the direct case details the costs AT&T expects to incur in 1988 and other financial information that we directed AT&T to place in the public record. Attachment 2 of the direct case describes AT&T's rate changes and shows the effect of AT&T's rates on

interstate financial results. Attachment 3 contains additional data requested by the Bureau. Attachment 4 provides data relating to the calculation of the Connecticut gross receipts tax factor.

III. SUMMARY OF OPPOSITION AND REPLY

8. US Sprint focuses primarily on AT&T's restructuring of its rates, arguing that the disproportionate rate adjustments are not cost-based and are insufficiently justified. According to Sprint, AT&T has failed to demonstrate that the network will be more efficiently utilized under the new rate structure, or that this structure is more economically rational.[15] Sprint argues that AT&T has not provided enough information for the Commission to determine whether AT&T's real incentive is merely to shift costs from more competitive services to less competitive services. Sprint claims that AT&T has sufficient market power for some services to enable AT&T to recover revenues above costs.

9. Sprint further argues that AT&T has failed to explain how it measures incremental or marginal costs or its so-called margins. In addition, Sprint contends that divergent margins alone should not be a sufficient basis for a rate restructuring.[16] Sprint next states that the instant filing conflicts with data provided by AT&T in November 1986.[17] The rate changes for WATS and 800 services are not cost-based, Sprint maintains, and are directly contrary to well-established Commission policy.[18] Finally, Sprint alleges that efficiency suffers when customers receive incorrect economic signals resulting from the alignment of rates merely to maintain price relationships.[19]

10. In its reply, AT&T argues that residential customers have received substantial benefits from the filing -- lower off-peak rates, lower daytime rates, and the benefits of an increased contribution to AT&T's fixed cost recovery.[20] AT&T further contends that it has proven that its revisions result in greater network efficiency, as well as a greater contribution to fixed cost recovery. In addition, AT&T states, the methods by which margins and incremental costs were calculated are fully documented.[21] Finally, AT&T states that the Commission has no policy against rate alignment to maintain appropriate price relationships.[22]

IV. DISCUSSION

11. We initiated this investigation to examine both the rate level and the revisions in the rate structure. We address the rate structure revisions first.

A. *Revised Rate Structure*

12. The primary argument Sprint makes regarding the reasonableness of the rate structure is that it is not cost-based and that AT&T's claims of deficient margins are unsupported and insufficient to justify disproportionate rate reductions. In *AT & T Communications*, CC Docket No. 86-81, Mimeo 4868, released May 30, 1986 (*May 30 Order)*, we considered the non-uniform flow-through of access charge reductions, resulting in varying rate decreases for different switched AT&T services. In that proceeding, AT&T had reduced its rates in a manner that reflected different margins for the various services and rate periods. We found:

> [The margin approach] is not inconsistent *per se* with Commission policy. The problem of disproportionate erosions in the margins of AT&T's services is not new. The Bureau has previously recognized that variations in the margins for particular services are relevant to an assessment of otherwise revenue-neutral tariff revisions. Revenue-neutral, margin-sensitive rate reductions reduce the threat of below-cost pricing that might result from an across-the-board reduction insensitive to the existing margin of a particular service. Accordingly, to the extent that AT&T's non-uniform reductions are revenue-neutral and accommodate variations in the margins of the affected services, they are not inconsistent with the Communications Act.[23]

13. Thus, we must reject Sprint's argument that AT&T has failed to justify its proposed rate restructuring. AT&T has demonstrated that it has a rational basis for these rate structure revisions. AT&T's direct case and reply provide adequate data to explain its calculation of margins and incremental costs, and to show that network efficiency should be improved by the rate restructuring. For example, AT&T explains that its margins are lower in the evening period than in the night/weekend period because a greater proportion of costs are assigned to the evening period, when peak volumes of traffic often occur.[24] AT&T also explains that the non-uniform price changes increase the contribution made to the recovery of fixed costs above the contribution that would have been generated under an across-the-board reduction. Moreover, because the non-uniform price changes reduce the rate of growth in the evening and night/weekend rate periods, AT&T explains that network efficiency is improved.[25]

14. Finally, this Bureau has already addressed Sprint's argument that "rate alignment" is unlawful because it sends incorrect economic signals. In the *May 30 Order*, we considered arguments that the use of the "alignment theory" of ratemaking in that case violated Commission policy. We found that AT&T's rate revisions there were not inconsistent with standards previously set forth. We found that failure to adjust the rates for certain services could substantially have reduced demand for those services and thus could have threatened AT&T's ability to recover its fixed costs for those offerings. We declared that such a result would be to the detriment of AT&T's general body of ratepayers.[26] In the instant case, AT&T's revisions, designed to maintain appropriate rate relationships with rates for other switched services, appear consistent with the standard described in the *May 30 Order*.

B. *Rate Level*

15. According to AT&T's Direct Case, savings stemming from growth, tax reform and accounting changes arising out of Financial Accounting Standards Board (FASB) Statement No. 87 would, *ceteris paribus*, increase AT&T's net earnings for 1988 by648 million.[27] AT&T claims that these savings will be offset by projected increases in expenses and that its rates will produce an overall return of 11.5 percent in the 1988 calendar year. Most of these projections appear to be sufficiently accurate in view of AT&T's decision to target rates below the authorized rate of return. Nevertheless, we conclude that the large increases in spending for the new billing and collection program warrant further investigation.

16. AT&T is planning within the next year to take over billing and collection of all MTS accounts above5 per month in offices converted to equal access. The cost of this program represents a major increase in spending. While the program is projected to reduce AT&T's fees for LEC Billing and Collection services by90 million, it would increase expenses by a far greater amount. Overall, this program would decrease AT&T's net earnings for 1988 by300 million.[28] AT&T says that this program is necessary to allow it to implement new service offerings in a timely manner, to provide the same level of service as its competitors, to provide adequate quality control over the billing process, to allow management of information about markets, product performance, and network utilization, and to control billing costs.[29]

17. Although a decision to adopt a more costly alternative may further purposes that will benefit the corporation and its shareholders, AT&T must demonstrate a clear ratepayer benefit to justify including the difference between projected expenses for this program and the billing and collection fees AT&T would have paid to local exchange carriers as an allowable expense. We will afford AT&T another opportunity to do so.

18. While this program might result in a benefit to the public over the long run, the cost so far exceeds the cost of other available alternatives that it may be unreasonable to allow expenses of this magnitude. Even if these expenses are indeed justified, we are concerned that the accounting for these expenses may improperly allocate too much cost to the current year. We therefore order AT&T to file additional data to identify and explain the full costs of and schedule of this program, and to justify both the level of these expenses and the level of the allocation to the 1988 revenue requirement.

19. To consider this issue, we require AT&T to file, no later than July 1, 1988, its direct case on the issues raised by the billing and collection program identified above. We invite interested persons to file oppositions to, and comments on, AT&T's direct case no later than July 11, 1988. AT&T may file a rebuttal to the oppositions and comments no later than July 18, 1988.

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, pursuant to Sections 201, 204, 218, and 403 of the Communications Act, 47 U.S.C. §§ 201, 204, 218, 403, that AT&T Communications is directed to file with the Commission the aforementioned information relating to its billing and collection program according to the schedule established herein.

21. IT IS FURTHER ORDERED that the investigation of other issues in CC Docket No. 87-611 IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Annual 1988 Access Tariff Filings, 3 FCC Rcd 1281 (1987).

[2] AT&T Communications, 3 FCC Rcd 263, 265 (1987) (*December 30 Order*).

[3] In AT&T Communications, 3 FCC Rcd 339 (1988) (*January 13 Order*), we described with more specificity the information that AT&T was required to provide.

[4] AT&T Direct Case at 7-8.

[5] *Id.* at 9 n.*.

[6] *American Tel. & Tel. v. FCC*, C.A. No. 85-1778, slip op. (D.C. Cir. Jan. 22, 1988).

[7] AT&T Direct Case at 11-12.

[8] *Id.* at 13.

[9] *Id.* at 2-3.

[10] *Id.* at Att. 5.

[11] *Id.* at 16-19, 23-25.

[12] *Id.* at 19-21.

[13] *Id.* at 22-23.

[14] *Id.* at 21-22.

[15] Sprint Opposition at 3-4.

[16] *Id.* at 4-6.

[17] Id. at 6-7.

[18] Id. at 7-8.

[19] Id. at 8-9.

[20] AT&T Reply at 3.

[21] Id. at 3-4.

[22] Id. at 7.

[23] May 30 Order at para. 16 (citation omitted).

[24] AT&T Reply at 4-5.

[25] AT&T Direct Case, Att. 2 at 11-14.

[26] May 30 Order at para. 40.

[27] AT&T Direct Case, Att. 1, Ex. A, chart 17.

[28] Id.

[29] Id., Att. 1.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-365

In the Matter of

Amendment of Section 73.202(b), RM-5777
Table of Allotments,
FM Broadcast Stations.
(Pella, Iowa)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: May 2, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of GBA, Inc. (petitioner), the Commission has before it the petition for reconsideration of the *Report and Order*, 3 FCC Rcd 1902 (1988), which dismissed petitioner's request for the substitution of Channel 277C for Channel 277C1 at Pella, Iowa, and the modification of its license for Station KFMD(FM) to specify the higher powered channel, based on a lack of continuing interest. Petitioner states that it did file comments reiterating its intention to apply for Channel 277C, if allotted to Pella, and has furnished a copy showing receipt by the Commission.

2. We believe the public interest would be served by substituting Channel 277C for Channel 277C1 at Pella since it could provide the community and its surrounding area with expanded service. Channel 277C can be allotted to Pella in compliance with the Commission's minimum distance separation requirements without a site restriction.[1] As proposed, we shall also modify petitioner's license for Station KFMD(FM) to specify operation on the higher powered channel.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Pella, Iowa	277C

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of GBA, Inc. for Station KFMD(FM), Pella, Iowa, IS MODIFIED effective **July 25, 1988,** to specify operation on Channel 277C, in lieu of Channel 277C1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That the petition for reconsideration filed by GBA, Inc. IS GRANTED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-24-36 and West Longitude 92-55-00.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-183

In the Matter of

Amendment of Section 73.202(b),	RM-5190
Table of Allotments,	RM-5441
FM Broadcast Stations.	
(Camden and Rockland,[1]	
Maine)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 2, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 51 Fed. Reg. 20674, published June 6, 1986, which proposed the allotment of FM Channel 277B to Camden, Maine, as that community's second FM broadcast facility. The *Notice* was issued in response to a petition filed by Northern Lights Broadcasting. Northern Lights Broadcasting did not file comments in response to the *Notice*. Supporting comments were filed by John J. Pineau.[2] A counterproposal was filed by Passamaquoddy Broadcasting, Inc. (Passamaquoddy). [3], [4]

2. In response to the *Notice*, Passamaquoddy, licensee of Station WMCM-FM, Rockland, Maine, submitted a counterproposal proposing the substitution of Channel 277B1 in lieu of Channel 228A at Rockland and modification of the Station WMCM-FM license to specify operation on Channel 277B1. Passamaquoddy pointed out that Station WMCM-FM is the only FM service licensed to Rockland and has experienced numerous instances of signal shadowing and distortion with its present facility. Further, it stated that Channel 277B1 would provide city grade coverage to Rockland and could be allotted consistent with the minimum separation requirements. Passamaquoddy also noted that Rockland has a 1980 U.S. Census population of 7,919 and is the county seat of Knox County. Moreover, Knox County has a population of 32,941 and has experienced a 13.5 percent growth rate within the past ten years.

3. Having considered the proposal and comments filed in this proceeding, we find that the public interest would benefit from the substitution of Channel 277B1 for Channel 228A at Rockland, Maine.[5] Channel 277B1 can be allotted to Rockland, Maine, in compliance with the Commission's spacing requirements.[6] In addition, we will authorize the modification of the Passamaquoddy license for Station WMCM-FM, Rockland, Maine, to specify operation on Channel 277B1. This action is in accordance with Section 1.420(g) of the Commission's Rules since no other expressions of interest have been received for the channel at Rockland. *See , Modification of FM Broadcast Station Licenses*, 98 FCC 2d 916 (1984). Concurrence by the Canadian government has been obtained because Rockland is located within 320 kilometers (200 miles) of the U.S.-Canadian border. In addition, the proposal for Rockland must conform with the technical requirements of Section 73.1030(c)(1)-(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Rockland, Maine	277B1

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station WMCM-FM, Rockland, Maine, IS MODIFIED to specify operation on Channel 277B1, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That the aforementioned petition for rule making filed by Northern Lights Broadcasting (RM-5190) IS HEREBY DISMISSED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] This community has been added to the caption.

[2] The comments by John J. Pineau were not timely filed, but were accompanied by a request for acceptance. These comments were accepted for the purpose of permitting the expression of

interest in an allotment to Camden, Maine. *See* , *Waterville, Maine*, 52 Fed. Reg. 16849, published May 6, 1987. However, John J. Pineau subsequently withdrew his interest in the proposed Camden allotment. Accordingly, his comments as an expression of interest will not be considered in this proceeding.

[3] Public Notice of the counterproposal was given on August 1, 1986, Report No. 1607 (RM-5441).

[4] Both Passamaquoddy Broadcasting, Inc. and John J. Pineau have filed other pleadings after the comment and reply comment dates. These pleadings are untimely and will not be considered.

[5] Inasmuch as there is no expression of interest in a Channel 277B allotment at Camden, Maine, the petition for rule making filed by Northern Lights Broadcasting will be dismissed.

[6] The reference coordinates for this allotment are 44-06-12 and 69-06-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-600

In the Matter of

Amendment of Section 73.202(b), RM-6117
Table of Allotments,
FM Broadcast Stations.
(White Rock, New Mexico)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 9, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. At the request of Torjaq Radio, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 3 FCC Rcd 250 (1988), proposing the substitution of Channel 266C2 for Channel 266A at White Rock, New Mexico, and the modification of its permit for Station KTJB to specify the higher powered channel. Petitioner filed comments reiterating its intention to apply for Channel 266C2, if allotted.

2. Channel 266C2 can be allocated to White Rock in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.5 kilometers (5.9 miles) northeast to avoid a short-spacing to the pending applications for Channel 267A at Albuquerque, New Mexico.[1]

3. We believe the public interest would be served by substituting Channel 266C2 for Channel 266A at White Rock, New Mexico, since it could provide the community and its environs with expanded radio service. As proposed, we shall also modify petitioner's permit for Station KTJB to specify operation on the higher powered channel.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
White Rock, New Mexico	266C2

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the permit of Torjaq Radio, Inc. for Station KTJB, White Rock, New Mexico, IS MODIFIED effective **July 25, 1988,** to specify operation on Channel 266C2 in lieu of Channel 266A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 35-54-12 and West Longitude 106-09-16. This site restriction does not protect the current operation of Station KLVF-FM, Channel 265A, Las Vegas, New Mexico. However, effective July 23, 1987, Station KLVF-FM was modified to specify operation on Channel 264C2. *See* 2 FCC Rcd 3451 (1987). There is no conflict between Channel 266C2 at White Rock, as allotted herein, and the transmitter site proposed in Station KLVF-FM's pending application (BPH-871020IC).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-415

In the Matter of

Amendment of Section 73.202(b), RM-5654
Table of Allotments,
FM Broadcast Stations.
(West Lafayette, Indiana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 9, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 2 FCC Rcd 6238 (1987), issued herein in response to a petition filed on behalf of Bruce Quinn (petitioner), proposing the allotment of Channel 294A to West Lafayette, Indiana, as that community's first local FM service.[1] Petitioner failed to file supporting comments reaffirming his intention to apply for Channel 294A. However, late-filed supporting comments were filed on behalf of David L. Stevenson.[2] No other comments were received.

2. As indicated in the *Notice*, Channel 294A can be allotted to West Lafayette, Indiana, consistent with the minimum distance spacing requirements specified in Section 73.207(b) of the Commission's Rules.[3]

3. In view of the above, we believe the public interest would be served by the instant proposal since it could provide a first local FM service to West Lafayette. Therefore, according to the authority set forth in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include West Lafayette, Indiana, as follows:

City	Channel No.
West Lafayette, Indiana	*267A, 294A

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. The window period for filing applications on Channel 294A at West Lafayette, Indiana, will open on **July 26, 1988,** and close on **August 25, 1988.**

6. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be directed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] In a separate proceeding (MM Docket No. 87-385) the Commission is also considering a proposal filed on behalf of Purdue University to allot Channel *267A on a reserved basis to West Lafayette.

[2] Stevenson's late-filed comments (accompanied by a petition to accept), have been admitted in this proceeding for the purpose of lodging an expression of interest in the West Lafayette proposal.

[3] This determination is based on the use of city reference coordinates at 40-27-06 and 86-55-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-385

In the Matter of

Amendment of Section 73.202(b), RM-5804
Table of Allotments,
FM Broadcast Stations.
(West Lafayette, Indiana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 9, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 5857 (1987), issued herein in response to a petition filed on behalf of Purdue University (petitioner), proposing the allotment of Channel *267A to West Lafayette, Indiana, on a reserved basis, as that community's second FM service.[1] Supporting comments were filed by petitioner reiterating its intention to apply for the channel. Additionally, comments were filed by Bruce Quinn (Quinn) in support of petitioner's proposal. No opposition comments were received.

2. As indicated in the *Notice*, commercial channels are generally not reserved for noncommercial educational use. Exceptions to this policy have fallen into one of two categories, *i.e.*, (1) channels in the noncommercial educational band are precluded due to the presence of Canadian or Mexican allocations; or (2) the use of channels in the noncommercial band may result in potential interference to television operations on VHF television Channel 6. *See Comobabi, Arizona*, 47 FR 32717 (1982); *Burlington and Newport, Vermont*, 45 RR 2d 786 (1979). Here, it has been shown that none of the twenty noncommercial educational FM channels (Channels 201-220) could be used at West Lafayette in compliance with Section 73.525 of the Commission's rules, due to the proximity of Station WRTV(TV), Channel 6, Indianapolis, Indiana. Thus, since the allocation and reservation of a commercial channel is the only means to establish a noncommercial educational channel to serve West Lafayette, we believe Channel *267A should be allotted thereto as requested.

3. Channel *267A can be allotted to West Lafayette consistent with the minimum distance separation requirements set forth in Section 73.207(b) of the Commission's Rules.[2]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to West Lafayette, Indiana, as follows:

City	Channel No.
West Lafayette, Indiana	*267A, 294A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. Applications for Channel *267A shall be accepted and processed by the cut-off procedure utilized for other noncommercial educational FM applications. *See Palm Desert, California*, 2 FCC Rcd 1289 (1987).

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application cut-off procedures indicated *supra*, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Channel 294A is also under consideration for allotment to West Lafayette in MM Docket No. 87-415, as a first local FM service to that community.

[2] Compliance is met based on the use of city reference coordinates at 40-27-06 and 86-55-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-301

In the Matter of

Amendment of Section 73.202(b), RM-5821
Table of Allotments,
FM Broadcast Stations.
(Dunnellon, Florida)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 2 FCC Rcd. 4716 (1987), proposing to substitute Channel 272C2 for Channel 272A at Dunnellon, Florida, at the request of the Asterisk Communications, Inc. (petitioner), licensee of Station WTRS-FM, Channel 272A at Dunnellon. In addition, the *Notice* proposed to modify the station license to specify Channel 272C2. Comments in support of the proposal were filed by the petitioner.

2. After consideration of the proposal, we conclude that the public interest would be served by the channel substitution at Dunnellon, in order to provide an increase in coverage by Station WTRS-FM. The allotment can be made in compliance with the minimum distance separation requirements. To accomodate Channel 272C2, petitioner proposes to relocate the transmitter for Station WTRS-FM to a site 21.3 kilometers (13.3 miles) north of Dunnellon.[1] In accordance with the provisions of Section 1.420(g) of the Rules, we are herein modifying the Class A license of Station WTRS-FM to specify operation on Channel 272C2.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below:

City	Channel No.
Dunnellon, Florida	272C2

4. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316(a) of the Communications Act of 1934, as amended, that the license of Arestisk Communications, Inc., IS MODIFIED to specify operation on Channel 272C2, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] Coordinates for Channel 272C2 at the restricted site are 29-14-06 and 82-24-36.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-362

In the Matter of

Amendment of Section 73.202(b), RM-5633
Table of Allotments,
FM Broadcast Stations.
(Copeland, Kansas)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd. 5618 (1987), proposing the allocation of FM Channel 256C1 to Copeland, Kansas, as that community's first FM service. The *Notice* was issued in response to a petition filed by Great Plains Christian Radio, Inc. (petitioner). Comments were filed by the petitioner restating its interest in the allocation. No other comments were received.

2. Channel 256C1 can be allocated to Copeland, Kansas, consistent with the minimum distance separation requirements of Section 73.207 of the Commission's Rules.[1]

3. In view of the fact that Channel 256C1 can be allocated to Copeland to provide the community with its first FM broadcast service, we find the allotment to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below:

Community	Channel No.
Copeland, Kansas	256C1

4. The window period for filing applications will open on **July 26, 1988,** and close on **August 25, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 256C1 are 37-32-31 and 100-37-45.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-528

In the Matter of

Amendment of Section 73.202(b), RM-5958
Table of Allotments,
FM Broadcast Stations.
(Great Falls, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1988; Released: June 8, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission is the *Notice of Proposed Rule Making*, 2 FCC Rcd. 7200 (1987), issued in response to a petition filed by Contemporary Communications (petitioner) proposing the substitution of FM Channel 262C1 for Channel 262C at Great Falls, Montana. Petitioner filed comments and reply comments in response to the *Notice*. No other comments were received.

2. In support of the proposal petitioner stated it was the sole remaining applicant for Channel 262C at Great Falls. However, petitioner further stated issuance of a construction permit for the facility has been delayed because it has been unable to obtain FAA approval for a site that would enable the station to meet the minimum height requirements for a full Class C facility (300 meters). According to petitioner, the FAA rejected its original site and an alternate site due to the proximity of the Great Falls International Airport. Therefore, petitioner requested that the channel be downgraded to Class C1 status. In comments, petitioner expressed a continuing interest in the substitution of Channel 262C1 for Channel 262C and indicated that it would amend its application to specify the lower class facility.

3. In reply comments, petitioner retracts its comments filed in support of its proposal and requests that the allocation of Channel 262C be allowed to remain as is. Petitioner argues that it has spent 2-1/2 years prosecuting its application for a new facility in Great Falls and has since learned that a new filing window would be necessary should the requested substitution be accomplished.[1] Petitioner contends that to allow other applicants an opportunity to file competing applications for this facility simply because the channel is being downgraded would be grossly unfair to Contemporary Communications.

4. As stated in the *Notice, a showing of continuing interest is required before a channel will be allotted. In light of the petitioner's withdrawal of interest in the proposal and absent any other expressions of interest, we shall dismiss petitioner's proposal.*

5. Accordingly, IT IS ORDERED, That the petition of Contemporary Communications requesting a channel substitution at Great Falls, Montana, IS HEREBY DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division

FOOTNOTES

[1] The *Notice* clearly stated that should the substitution be accomplished, a new filing window would be established in order to provide a first opportunity to apply for the lower class channel.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-469

In the Matter of

Amendment of Section 73.202(b), RM-5976
Table of Allotments,
FM Broadcast Stations.
(Kirksville, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1988; Released: June 9, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 2 FCC Rcd. 6660, (1987), issued in response to a petition filed by Admiral Broadcasting Corporation (petitioner), proposing the substitution of FM Channel 229C2 for Channel 228A at Kirksville, Missouri. Petitioner also requested the modification of its license for Station KTUF(FM), Channel 228A, to specify operation on Channel 229C2. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. Comments were also filed by KIRX, Inc. (KIRX), to which petitioner filed reply comments.

2. KIRX, licensee of Station KRXL(FM), Channel 233C, Kirksville, Missouri, filed comments in response to the *Notice*. KIRX does not oppose the proposed rule making, but requests that if the rule making is finalized, a site restriction be imposed on Channel 229C2 at Kirksville. KIRX alleges that a C2 facility from the present KTUF(FM) site would place its blanket contour over 26% of the city of Kirksville, which represents 4,463 people. KIRX points out that Section 73.318 of the Rules indicates that all complaints of blanketing which are received by the station during a one year period must be satisfied at no cost to the complainant. KIRX states that Station KRXL presently operates from a transmitter site within Kirksville but holds a construction permit to move its transmitter site out of Kirksville to a location on the Channel 3 TV tower 31 miles from Kirksville. KIRX further states that FCC standards do not specify required separations for FM stations operating on more than the third adjacent channel, but that the close proximity of the proposed KTUF Channel 229C2 frequency to Station KRXL(FM) will make blanketing interference problems to KRXL reception more serious.

3. Petitioner, in reply comments, states that the objections raised by KIRX should be considered at the application stage rather than the rule making stage, as the comments do not object to the proposed upgrade or modification but instead argue about a particular transmitter site causing interference. Petitioner also argues that the interference alleged by KIRX has been overstated by KIRX and less than nine percent or 1,489 people reside in the area which KIRX alleges will be subject to blanketing interference. Finally, petitioner asserts that KIRX, by recently relocating its transmitter site far away from the community, may have created the reception problem for which it seeks to blame petitioner.

4. Based on the above information, we believe the public interest will be served by the substitution of FM Channel 229C2 for Channel 228A at Kirksville. The blanketing interference problems alleged by KIRX are more appropriately handled at the application stage than at the rule making stage. A staff engineering analysis has determined that Channel 229C2 can be allocated to Kirksville in compliance with the minimum distance separation requirements of the Commission's Rules at the current site for Station KTUF(FM).[1] In addition, we shall modify the license of Station KTUF(FM) to specify operation on Channel 229C2 in accordance with Section 1.420(g) of the Commission's Rules.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Kirksville, Missouri	229C2, 233C, 300C1

7. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KTUF(FM), Kirksville, Missouri, IS MODIFIED to specify operation on Channel 229C2 in lieu of Channel 228A, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall file with the Commission a minor change application for construction permit (Form 301) specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates used for Channel 229C2 at Kirksville are 40-13-38 and 92-36-35.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-261

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Altamont, Oregon) — RM-6339

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1988; Released: June 9, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Western States Broadcating (petitioner), requesting the allotment of Channel 300A to Altamont, Oregon, as the community's second local FM service. Petitioner states that it will apply for the channel, if allotted. Channel 300A can be allotted to Altamont in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 300A to Altamont, as the community's second local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Altamont, Oregon	267C	267C, 300A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

William L. Zawila
Western States Broadcasting
12550 Brookhurst Street
Garden Grove, California 92640
(Petitioner)

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 42-12-00 and West Longitude 121-43-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-262

In the Matter of

Amendment of Section 73.202(b), RM-6340
Table of Allotments,
FM Broadcast Stations.
(Laughlin, Nevada)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1988; Released: June 9, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by John Brush (petitioner), requesting the allotment of Channel 228C to Laughlin, Nevada, as the community's second local FM service. Petitioner states that he will apply for the channel, if allotted.

2. Channel 228C can be allotted to Laughlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.7 kilometers (3.5 miles) east to avoid a short-spacing to Station KRCK, Channel 229B, Coachella, California, and to Station KXTZ, Channel 231C, Henderson, Nevada.[1] Mexican concurrence in the allotment must be received before the channel can be allotted since Laughlin is located within 320 kilometers of the U.S.-Mexican border.

3. We believe the public interest would be served by proposing the allocation of Channel 228C to Laughlin, Nevada, since it could provide the community with its second local FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Laughlin, Nevada	300C1	228C, 300C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, Jr., Esq.
1359 Black Meadow Road
Greenwood Plantation
Spotsylvania, Virginia 22553
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits

or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 35-09-03 and West Longitude 114-30-49.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-263

In the Matter of

Amendment of Section 73.202(b), RM-6341
Table of Allotments,
FM Broadcast Stations.
(Brooklyn, Iowa)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1988; Released: June 9, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Randy E. Henry (petitioner), requesting the substitution of Channel 256C2 for Channel 257A at Brooklyn, Iowa, and the modification of his permit for Station KSKB to specify the higher powered channel. Petitioner states that the public interest would be served by substituting Channel 256C2 for Channel 257A since it could permit expanded service to the community and its surrounding area. Channel 256C2 can be allotted to Brooklyn in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in petitioner's outstanding construction permit.[1]

2. As requested, we shall also propose to modify petitioner's construction permit to specify Channel 256C2. In accordance with Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of Channel 256C2 at Brooklyn nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by other interested parties.

3. We believe the public interest would be served by proposing the substitution of Channel 256C2 for 257A at Brooklyn, since it could provide the area with expanded radio service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Brooklyn, Iowa	257A	256C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Diane H. Ming, Esq.
Grammon & Grange
1925 K Street, N.W., Suite 300
Washington, D.C. 20006-1115
(Counsel to petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See , Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-42-36 and West Longitude 92-27-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-264

In the Matter of

Amendment of Section 73.606(b), RM-6160
Table of Allotments,
TV Broadcast Stations.
(Gosnell, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1988; Released: June 9, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the petition for rule making filed on behalf of Gosnell School District 6 (petitioner), seeking the allotment of UHF television 46 to Gosnell, Arkansas, as that community's first local television service. Petitioner states that should this proposal be adopted, it will apply for authority to build and operate a station thereon.

2. Gosnell (population 3,215),[1] in Mississippi County (population 59,517), is located approximately 95 kilometers (60 miles) north of Memphis, Tennessee. It presently is devoid of any local television broadcast service.

3. A staff engineering analysis has determined that Channel 46 can be allotted to Gosnell in conformity with the minimum distance separation requirements contained in Sections 73.610 and 73.698 of the Commission's Rules,[2] with a carrier offset to avoid short-spacing on the co-channel at East St. Louis, Illinois. [3]

4. It should be noted that although the Commission has recently imposed a freeze on television allotments, or applications therefor, in certain metropolitan areas,[4] Gosnell is not affected thereby.

5. In view of the above, we believe the public interest would be served by proposing the allotment of UHF television Channel 46 to Gosnell, since it could provide a first local television broadcast service to the community. Therefore, we shall seek comments on the proposal to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, as follows:

	Channel No.	
City	Present	Proposed
Gosnell, Arkansas	–	46+

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, as follows:

Gosnell School District 6
Lynn H. Cox
Superintendent
600 Highway 181
Gosnell, AR 72315

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.(

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Population figures reported herein were extracted from the 1980 U.S. Census.

[2] Reference coordinates utilized in this determination are 35-57-30 and 89-58-12.

[3] A construction permit has been issued to Station WCVL(TV) at East St. Louis, IL at coordinates 38-28-56 and 90-23-53, for which a modification application is pending (BMPCT-871210KF) at coordinates 38-23-30 and 90-29-16.

[4] *See* , MM Docket No. 87-268, Notice of Inquiry, 2 FCC Rcd 5125 (1987), to explore the uses of advanced television systems (ATV) in broadcasting, and Order, 52 FR 28346, July 29, 1987, freezing the filing of construction permit applications for vacant UHF television channels in the affected metropolitan areas.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-253

In the Matter of

Amendment of Section 73.202(b), RM-6162
Table of Allotments,
FM Broadcast Stations.
(Avon, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 3, 1988 **Released: June 10, 1988**

By the Deputy Chief, Policy and Rules Division:

1. Rocky Mountain Wireless, Inc. (petitioner), licensee of Station KZYR(FM), Channel 276A, Avon, Colorado, has filed a petition for rule making seeking the substitution of Channel 276C2 for Channel 276A and modification of its license to specify operation on Channel 276C2. The petitioner states that adoption of its proposal will enable it to provide expanded service to Avon and surrounding areas.

2. We believe that this proposal is in the public interest. A staff engineering analysis has verified that Channel 276C2 can be substituted for Channel 276A at the site specified in this petition for rule making in conformity with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules.[1]

3. In consideration of the above, we propose to substitute Channel 276C2 for Channel 276A at Avon, Colorado. As requested, we also propose to modify the Class A license of Station KZYR(FM) to specify operation on Channel 276C2. Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we will not accept other expressions of interest in the use of Channel 276C2 at Avon.

4. Accordingly, in order to provide Avon with its first expanded coverage FM service, we believe it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to that community, as follows:

	Channel No.	
City	Present	Proposed
Avon, Colorado	276A	276C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Howard M. Liberman, Esq.
Jonathan V. Cohen, Esq.
Arter & Hadden
1919 Penn. Ave., NW
Suite 400
Washington, DC 20006

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The reference coordinates are 39-36-58 and 106-26-57.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-506

In the Matter of

Amendment of Section 73.202(b),	RM-5524
Table of Allotments,	RM-5861
FM Broadcast Stations.	
(Washington and Princeton,[1]	
Indiana)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 12, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 758 (1987), issued in response to a request filed by Dennis Daily (Daily), proposing the allotment of Channel 300A to Washington, Indiana, as that community's second local FM service. Petitioner failed to file comments in response to the *Notice*. However, supporting comments were filed on behalf of William A. Greene d/b/a Greene Electronics (Greene). Randolph V. Bell (Bell) filed a petition for rule making seeking the allotment of Channel 300A to Princeton, Indiana,[2] as that community's second local FM service, to which Greene responded. Bell filed untimely reply comments and further reply comments.

2. In response to the counterproposal, Greene suggested the allotment of Channel 229A to Princeton in lieu of Channel 300A, to which Bell acceded. Subsequently, Bell requested the allotment of Channel 263A to Princeton in lieu of Channel 229A, to avoid a conflict with a proposal to allot Channel 228A to Chandler, Indiana (RM-6141).

3. As indicated in the *Notice*, Channel 300A can be allotted to Washington, Indiana, consistent with the provisions of Section 73.207(b) of the Commission's Rules, provided the transmitter therefor is sited in an area at least 5.3 kilometers (3.3 miles) west [3] of the community to avoid short-spacing to Station WTPI(FM), Channel 300B, Indianapolis, Indiana, as well as to two pending applications at Corydon, Indiana. Moreover, we have determined that Channel 263A can be allotted to Princeton, Indiana, in conformity with the technical requirements of our Rules, provided the transmitter is sited at least 12.7 kilometers (7.9 miles) north[4] of the community to avoid short-spacing to an application filed by Station WZZF-FM, Channel 262C1, to reclassify its facilities to maintain Class C status (File No. 870302IF). As a result, a comparison of the communities is not required to resolve this proceeding.

4. In light of the above, we believe the public interest would be served by allotting Channel 300A to Washington, Indiana, and Channel 263A to Princeton, Indiana, as a first competitive FM service at each community, for the expression of diverse viewpoints and programming.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Princeton, Indiana	251B, 263A
Washington, Indiana	293B, 300A

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. The window period for filing applications on Channel 263A at Princeton, Indiana, and Channel 300A at Washington, Indiana, will open on **July 26, 1988,** and close on **August 25, 1988.**

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] This community has been added to the caption.

[2] Bell's petition was treated as a counterproposal in this proceeding. Public Notice of the counterproposal was given on April 21, 1987, Report No. 1655.

[3] Reference coordinates of the restricted site are 38-39-55 and 87-13-59.

[4] Reference coordinates of the restricted site are 38-28-11 and 87-33-53.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-334

In the Matter of

Amendment of Section 73.202(b), RM-5741
Table of Allotments,
FM Broadcast Stations.
(Madera, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 12, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission considers the *Notice of Proposed Rule Making*, 2 FCC Rcd 5242 (1987), issued herein at the request of Madera Broadcasting, Inc., licensee of Station KHOT-FM,[1] Channel 221A, Madera, California, proposing the substitution of Channel 221B1 for Channel 221A and modification of its license accordingly to specify operation on the higher-powered channel. Petitioner filed supporting comments reaffirming his interest in the proposal.

2. We believe the public interest would be served by the substitution of Channel 221B1 for Channel 221A, as proposed, since it could provide service to an expanded coverage area in that region. A staff engineering analysis has determined that Channel 221B1 can be allocated to Madera, at the petitioner's present transmitter site,[2] in conformity with the minimum distance separation requirements contained in Section 73.207(b) of the Commission's Rules, [3] and with other technical requirements.[4] We have authorized, *infra*, a modification of the license of Station KHOT-FM. *See* Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Madera, California, as follows:

City	Channel No.
Madera, California	221B1,297A

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station KHOT-FM, Madera, California, IS MODIFIED, to specify operation on Channel 221B1 in lieu of Channel 221A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. As indicated above, the Secretary SHALL SERVE a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, on the permittee of Station KLFA(FM), King City, California, as follows:

Ralin Broadcasting Corporation
124 N. 2d Street
King City, CA 93930

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Although the petition for rule making identified the proponent as SJCC Broadcasting, Inc., licensee of Station KQMD-FM, petitioner subsequently advised the Commission of a change in the name of the licensee as well as the fact that the station's call letters have changed to KHOT-FM.

[2] Reference coordinates at petitioner's present transmitter site are 36-57-58 and 120-02-06.

[3] The required separation is met based on the Commission's action upgrading Station KLFA(FM), King City, CA, from Channel 221A to Channel 230B1, pursuant to MM Docket No. 85-262. On August 11, 1986, the Commission granted Station KLFA's application for a construction permit for Channel 230B1 (BMP-8670508IA; modified BMPH-870330IQ).

[4] As indicated in the *Notice*, pursuant to the provisions of *FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations*, 52 FR 8259, March 17, 1987 (Section 1.420(h) Note), a staff engineering analysis also determined that the 1 mv/m signal contour of the instant proposal would not overlap the Grade B contour of any television Channel 6 operation in the proposed service area.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-467

In the Matter of

Amendment of Section 73.202(b), RM-5959
Table of Allotments,
FM Broadcast Stations.
(Ennis, Montana)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 11, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission is the *Notice of Proposed Rule Making*, 2 FCC Rcd. 6664 (1987), proposing the allocation of FM Channel 254C2 to Ennis, Montana, as that community's first FM broadcast service. The *Notice* was issued in response to a petition filed by Big M Broadcast Associates (petitioner). Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the allotment of FM Channel 254C2 to Ennis, Montana, since it could provide the community with its first FM broadcast service. Channel 254C2 can be allocated to Ennis, Montana, consistent with the minimum distance separation requirements of the Commission's Rules.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Ennis, Montana	254C2

4. The window period for filing applications will open on **July 26, 1988,** and close on **August 25, 1988.**

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 254C2 are 45-21-12 and 111-44-06.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-40

In the Matter of

Amendment of Section 73.202(b),	RM-5478
Table of Allotments,	RM-5911
FM Broadcast Stations.	
(Stamps and Camden,[1] Arkansas)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 13, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making* herein, 2 FCC Rcd 1537 (1987), issued in response to a request filed on behalf of Southwest Arkansas Broadcasting Company, Inc.,[2] (Southwest" or "petitioner), licensee of Station KMSL(FM) (Channel 261A), Stamps, Arkansas, proposing the substitution of Channel 263C2 for Channel 261A and modification of its license accordingly. Supporting comments were filed by Southwest in response to the *Notice*, in which it reaffirmed its intentions. A counterproposal was filed on behalf of Y95 Radio, [3] (Y95), permittee of Station KCXY(FM)[4] (Channel 237A), Camden, Arkansas.

2. In its counterproposal, Y95 requests the substitution of Channel 263C2 for Channel 237A at Camden and modification of its construction permit for Station KCEZ(FM) (Channel 237A) accordingly. In support of its proposal, Y95 avers that adoption of its proposal would provide Camden with its second wide coverage FM facility.

3. In reply comments, Southwest opposes Y95's proposal at Camden for two reasons. First, it objects to the fact that no prior notice of Camden's nonadjacent channel modification request was made available for comment by other interested parties, nor did Y95 supply a second equivalent channel, as required by Section 1.420 of the Commission's Rules, in the event other interests were expressed. Secondly, petitioner claims that Y95's proposal does not demonstrate compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, with regard to its present operation on Channel 261A in Stamps, Arkansas. Therefore, petitioner urges denial of the Camden proposal.

4. Initially, we wish to explicitly state that, when a party files a counterproposal and in that counterproposal proposes an upgrade which must be considered comparatively with an upgrade proposal included in the initial notice of proposed rule making in the proceeding, the party filing the counterproposal must submit a gain area showing in order for its counterproposal to be considered, unless a gain area showing is immaterial to the disposition of the case. Parties arguing that a gain area showing is immaterial to the disposition of the case, and who consequently fail to submit a gain area showing, will do so at their own peril. If their arguments are rejected, we will dismiss the counterproposal for failure to submit sufficient evidence to justify a finding that the upgrade would serve the public interest. We intend to apply this policy in all rule making poceedings in which the notice of proposed rule making is released after the release date of this report and order.[5]

5. Stamps (population 2,859),[6] in Lafayette County (population 10,213), is located approximately 180 kilometers (110 miles) southwest of Little Rock, Arkansas. It is served locally by petitioner's Station KMSL(FM) (Channel 261A). There are no other aural services in Stamps. Petitioner's proposal would provide Stamps with its first wide coverage area FM station.

6. Camden (population 15,386), the seat of Ouachita County (population 30,541), is located approximately 140 kilometers (85 miles) southwest of Little Rock. It currently is scheduled to receive local service from Y95's Station KCXY(FM)[7] (Channel 237A), and is served by co-owned Stations KAMD(AM) (fulltime) and KWEH(FM) (Channel 246C2), as well as Station KJWH(AM) (fulltime).

7. A staff engineering analysis reveals that, contrary to petitioner's claim, Y95's proposal at Camden would comply with the technical requirements of Section 73.207(b) of the Commission's Rules with regard to the present Class A operation of Station KMSL(FM) at Stamps.[8]

8. A review of the proposals indicate that both communities are deserving of a wide coverage area FM station. However, only one of the proposals can prevail since they are separated by a distance of 35.6 kilometers, whereas 190 kilometers is required between Class C2 co-channels. A staff frequency spectrum analysis reveals there are no other channels available to either community to resolve the conflict. Therefore, we must choose between the conflicting proposals, based on the allotment criteria set forth in *Revision of FM Policies and Procedures*, 90 FCC 2d 88 (1982), as follows:

(1) first full-time aural service;
(2) second full-time aural service;
(3) first local service;
(4) other public interest matters.
(Co-equal weight is accorded priorities (2) and (3).)

9. In analyzing the conflicting proposals, we have ascertained that no first or second aural service would be provided (priorities (1) and (2)). Furthermore, since each community has existing FM service, neither will provide a first local service (priority (3)). Therefore, our determination must be based on priority (4), "other public interest matters".

10. Priority (4) allows the Commission to compare the extended service areas proposed by each proponent. *See , Greenup, KY and Athens, OH*, 2 FCC Rcd 4319 (1987). Thus, a staff engineering analysis was performed, using standard FCC methodology at the requested sites of each proposal.[9] As a result of that study, we have determined that the Stamps proposal would result in a gain of 97,850 persons whereas the Camden proposal would provide service to a population of 71,641 within its gain area.[10] Clearly, the Stamps proposal will bring the benefits of a

new service to a greater number of people. Therefore, Y95's proposal to upgrade on Channel 263C2 at Camden, Arkansas will be denied.

11. Based on the above, we believe the public interest will be served by substituting Channel 263C2 for Channel 261A at Stamps, Arkansas, and modifying the license of Station KMSL(FM) accordingly. As indicated in the *Notice*, Channel 263C2 can be allotted to Stamps, Arkansas, at the petitioner's preferred site 26.5 kilometers (16.5 miles) northeast of the community. This will negate a short-spacing to Station KRMD(FM) (Channel 266C), Shreveport, LA.[11] In addition, we shall modify the license of Station KMSL(FM) to specify operation of Channel 263C2, as requested, in accordance with the provisions of Section 1.420(g) of the Commission's Rules.

12. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Stamps, Arkansas, as follows:

City	Channel No.
Stamps, Arkansas	263C2

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Southwest Arkansas Broadcasting Company, Inc. for Station KMSL(FM), Stamps, Arkansas, IS MODIFIED, effective **July 25, 1988,** to specify operation on Channel 263C2 in lieu of Channel 261A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

14. IT IS FURTHER ORDERED, That the petition for rule making filed by Y95, Inc. (RM-5911), IS DENIED.

15. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to Southwest Arkansas Broadcasting Co., Inc., licensee of Station KMSL(FM), at 724 South Jackson, Magnolia, Arkansas 71753, and by regular mail to petitioner's counsel, Eugene T. Smith, Esq., 715 G St., S.E., Washington, D.C. 20003.

16. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

17. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] This community has been added to the caption.

[2] Previously identified in the *Notice* as KMSL Radio, Inc.

[3] Public Notice of the counterproposal was given on May 11, 1987 (Report No. 1659), and thereafter corrected on May 20, 1987 (Report No. 1661).

[4] Formerly Station KCEZ(FM).

[5] In situations where the proponent of the counterproposal is expected to submit a gain area showing, the proponent of the original proposed upgrade with which the counterproposal is mutually exclusive will also be expected to submit a gain area showing in response to the Commission's public notice of the filing of the counterproposal. Failure to submit such a showing subjects the original proponent to the same risk of dismissal as those to which a proponent of a counterproposal is subjected for failure to submit a gain area showing.

[6] Population figures reported herein are from the 1980 U.S. Census.

[7] Station KCXY(FM) is silent at the present time.

[8] Compliance is premised on a site restriction 26.5 kilometers northeast of Camden, utilizing the following coordinates: 33-24-35; 92-52-23.

[9] Reference coordinates of the proposed sites are as follows: *Stamps, AR* : 33-28-00; 93-15-00 (26.5 kilometers northeast); *Camden, AR* : 33-24-35; 92-52-23 (19.8 kilometers south).

[10] This was determined by including the population of entire new counties that will receive service and, in divided counties, adding the population of cities receiving new service, while prorating the non-urban population in proportion to area.

[11] Although the *Notice* also indicated that the allotment of Channel 263C2 at Stamps would be contingent upon the grant of a license to cover the construction permit issued to Station KPXI(FM) (Channel 264C), Mt. Pleasant, Texas, that restriction no longer applies since the station has been reclassified to Channel 264C1.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-333

In the Matter of

Amendment of Section 73.202(b), RM-5749
Table of Allotments,
FM Broadcast Stations.
(Millbrook, Alabama)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 13, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 2 FCC Rcd 5326 (1987), issued herein in response to a petition filed on behalf of Mac Carter (petitioner), proposing the allotment of FM Channel 246A to Millbrook, Alabama, as that community's first local broadcast service. Supporting comments were filed by William A. Gunter and Terry G. Davis (Gunter and Davis). Petitioner filed late comments.[1] No reply comments were received.

2. We believe the public interest would be served by allotting Channel 246A to Millbrook, Alabama, since it could provide a first local broadcast service to the community.

3. As indicated in the *Notice*, Channel 246A can be allotted to Millbrook, Alabama, in conformity with the minimum spacing requirements specified in Section 73.207(b) of the Commission's Rules.[2]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **July 25, 1988,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
Millbrook, Alabama	246A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 246A at Millbrook, Alabama, will open on **July 26, 1988,** and close on **August 25, 1988.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] Petitioner's late comments have not been accepted for consideration herein since they were filed approximately one month after the deadline specified therefor, did not contain a showing of good cause for tardiness, and were not accompanied by a motion to accept. However, such denial will not prejudice petitioner's right to file an application for Channel 246A, if allotted.

[2] This determination is based on the use of Millbrook center city reference coordinates at 32-28-47, 86-21-43.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 80-286

In the Matter of

Amendment of Part 36 of the
Commission's Rules and
Establishment of a
Joint Board

ERRATUM

Released: June 9, 1988

By the Commission:

1. On May 4, 1988, the Docket No. 80-286 Federal-State Joint Board adopted an Order Inviting Comments and Request for Data in the above- captioned proceeding. *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, FCC 88J-1, released May 16, 1988. The following amendments have been made to that Order:

Appendix A, 36.372(c)(i) should read, "The Interexchange Carrier Sales subcategory includes only those costs incurred for administrative and sales activities specifically related to marketing services to interexchange carriers. Expenses in this subcategory are apportioned among the operations on the basis of current billing of Account 5080, Network Access Revenue, excluding Account 5081, End User Revenue."

Appendix A, 36.372(d)(i) should read, "Interexchange Advertising includes costs incurred to develop and implement promotional strategies that stimulate the purchase of products and services related to toll and access services. Expenses assigned to this subcategory will include only those expenses specifically incurred to promote toll or access service. Expenses in this subcategory are apportioned among the operations on the basis of current billing of Account 5100, Long Distance Message Revenue, and Account 5080, Network Access Revenue, excluding Account 5081, End User Revenue."

Appendix A, 36.372(b)(ii), the word "Exchange" should read "End User."

Appendix C, the box which reads "EXCHANGE" should read "END USER."

Appendix B - Section 3, "State Access Rev" line items "1-4" were added to line item "C4.b."

Appendix B, line 1, "VER: 05/04/88" should read "VER: 05/31/88."

"Paragraph 29 should read, "Interested parties may file comments and data on the issues discussed herein on or before June 15, 1988, and reply comments on or before July 15, 1988. In accordance with Sections 1.415 and 1.419 of the Commission's Rules,[1] parties must serve an original and five copies on the Secretary of the Federal Communications Commission. Parties must also serve copies on the Joint Board members and staff listed in Appendix D. Parties filing data must serve two copies of the disk containing the data submission on the Federal Communications Commision as indicated in Appendix B. Parties must also serve a copy of all comments, a disk and a hard copy containing the data submission on the Commission's contractor for public records duplication, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies of the comments will be available for inspection in the Commission's Docket Reference Room, 1919 M Street, N.W., Room 239, Washington, D.C. 20554."

The beginning of Appendix B should include:

"The purpose of this data request is to provide the Federal-State Joint Board, the Commission, and interested parties with current and complete data concerning the allocation of costs in Account 6610. We request that all local telephone companies settling on a cost study basis cooperate fully and provide the information requested in a timely fashion. We do not request that average schedule companies respond to this data request. Respondents should provide a separate Lotus file for each study area for a representative month of 1987. Questions concerning this data request should be directed to Tom Quaile at 202-632-7500.

Companies responding to this data request may obtain a copy of a disk containing the template for the data submission from the Commission's Accounting and Audits Division. This template was prepared using Lotus 1-2-3 software, Version 2.01. Two copies of the completed disk and two hard copies should be submitted to:

Tom Quaile
Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
2000 L Street, N.W., Room 257
Washington, D.C. 20554
(Please hand deliver)."

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, II
Secretary

FOOTNOTE

[1] 47 C.F.R. §1.415 and §1.419.

FEDERAL COMMUNICATIONS COMMISSION
MARKETING EXPENSES AND OPERATING REVENUES
1987 DATA - ANNUALIZED *
TOTAL STUDY AREA
(UNSEPARATED AMOUNTS)
(USE WHOLE DOLLARS)

##

APPENDIX B - SECTION 1

* USE A REPRESENTATIVE 1987 MONTH MULTIPLIED BY 12. IF 1987 MONTHLY DATA IS NOT AVAILABLE, USE REPRESENTATIVE QUARTERLY OR SEMI-ANNUAL DATA, ANNUALIZED.

FILE RENAMING INSTRUCTIONS:

TO INSURE ACCURACY IN SUMMATION OF THE DATA, PLEASE CHANGE THE CURRENT FILE NAME (MKTG.WK1) TO AN EIGHT (8) CHARACTER FILE NAME WHERE THE FIRST TWO CHARACTERS ARE THE INITIALS OF THE COMPANY NAME, THE SECOND TWO CHARACTERS ARE THE INITIALS OF THE STUDY AREA, AND THE REMAINING 4 CHARACTERS ARE "MKTG". THEREFORE, AN EXAMPLE FILE NAME FOR BELL ATLANTIC'S PENNSYLVANIA STUDY AREA WILL BE "BAPAMKTG.WK1".

NOTE: DO NOT ADD OR DELETE COLUMNS OR ROWS OR MAKE ANY CHANGES IN THE WORKSHEET. ANY COMMENTS CAN BE ADDED TO THE FOOTNOTE SECTION AT THE END OF THE WORKSHEET.

35 **********
36
37 MAILING ADDRESS:
38 _____
39 _____
40 _____
41 _____
42 _____
43
44 CONTACT PERSON:
45 _____
46 TELEPHONE NUMBER:
47 _____
48
49 COMPANY FILING DATA
50 STUDY AREA _____
51 STUDY AREA CODE _____
52 MO. & YR. OR PERIOD USED TO ANNUALIZE DATA _____

54 ##########
55 APPENDIX B - SECTION 2
56
57 -PART 31 ACCOUNTS (UNSEPARATED AMOUNTS)-
58 ----------
59 A1. 640 - GEN COMMERCIAL ADMIN EXPENSE _____
60
61 A2. 642 - ADVERTISING EXPENSE _____
62
63 A3. 643 - SALES EXPENSE _____
64
65 A4. 645 - LOCAL COMMERCIAL EXPENSE _____
66
67 A5.* _____ _____
68 * INSERT ACCOUNT NUMBER AND AMOUNT FOR ALL OTHER
69 AND EXPLAIN IN FOOTNOTE SECTION.
70

-PART 32 ACCOUNTS (UNSEPARATED AMOUNTS)-
ENTER THE PORTION OF THE PART 31 EXPENSES LISTED ABOVE (A1 - A5) THAT WOULD BE CHARGED TO THE CORRESPONDING PART 32 ACCTS LISTED BELOW (B1 - B6).

B1. TOTAL - 6611 - PROD MGMT EXPENSE	0
a. 6611 - PROD MGMT EXP (ASSOCIATED WITH A1)	
b. 6611 - PROD MGMT EXP (ASSOCIATED WITH A5)	
B2. TOTAL - 6612 - SALES EXPENSE	0
a. 6612 - SALES EXPENSE (ASSOCIATED WITH A1)	
b. 6612 - SALES EXPENSE (ASSOCIATED WITH A3)	
c. 6612 - SALES EXPENSE (ASSOCIATED WITH A4)	
d. 6612 - SALES EXPENSE (ASSOCIATED WITH A5)	
B3. TOTAL - 6613 - PROD ADV EXP	0
a. 6613 - PROD ADV EXP (ASSOCIATED WITH A2)	
b. 6613 - PROD ADV EXP (ASSOCIATED WITH A5)	
B4. TOTAL - 6611 - PRODUCT MGMT EXPENSE	0
a. TOLL AND ACCESS	0
1. INTEREXCHANGE CARRIER	
2. END USER	
b. EXCHANGE	0
1. BUSINESS	
2. RESIDENCE	
3. OTHER	
c. GENERAL	
B5. TOTAL - 6612 - SALES EXPENSE	0
a. INTEREXCHANGE CARRIER	
b. END USER	0
1. BUSINESS	
2. RESIDENCE	
3. OTHER	
c. GENERAL	
B6. TOTAL - 6613 - PRODUCT ADVERTISING EXPENSE	0
a. INTEREXCHANGE ADVERTISING	
b. PRODUCT SPECIFIC ADVERTISING	
c. GENERAL ADVERTISING EXPENSE	

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113 ------------------------------------------------------------------------
114
115 B7. NET RETURN ON MARKETING PLANT INVESTMENT *                  _______
116
117     * NET RETURN = INVESTMENT SPECIFICALLY RELATED TO
118     MARKETING ACTIVITY, LESS RESERVES, TIMES THE
119     AUTHORIZED RATE OF RETURN (PLUS ADJUSTMENT FOR IDC
120     AND ITC, IF APPLICABLE).
121
122 B8. OTHER OVERHEAD                                              _______
123     (FIT, SIT & OTHER INDIRECT EXPENSES AND TAXES
124     WHICH WOULD BE ALLOCATED INDIRECTLY BY PART 36 AS
125     A RESULT OF THE MARKETING EXPENSE ALLOCATION. USE
126     THE STATUTORY TAX RATE FOR THE DATA SUBMITTED).
127
128 B9. TOTAL REVENUE REQUIREMENT (MARKETING)                          0
129     (SUM OF LINES B4 THRU B9 TOTALS)
130
131 ########################################################################
132     APPENDIX B - SECTION 3
133
134     -PART 31 OPERATING REVENUE ACCOUNTS
135      (BILLED REVENUES AS DEFINED IN PARTS 36/67)
136 ------------------------------------------------------------------------
137 C1. 500-506 - LOCAL SVC REV                                     _______
138
139 C2. 510-516 - INTERST TOLL REV                                 _______
140
141 C3. 510-516 - STATE TOLL REV                                   _______
142
143 C4. 508-509 - TOTAL ACCESS REV                                        0
144     a. 508 - TOTAL INTERST ACCESS REV                                 0
145        1. 508.1    - INTERST-SLC                                _______
146        2. 508.2(a) - INTERST-CCL                                _______
147        3. 508.2(b) - INTERST-SWITCHED                           _______
148        4. 508.3    - INTERST-SPECIAL                            _______
149     b. 509 - TOTAL STATE ACCESS REV                                   0
150        1. STATE-SLC                                             _______
151        2. STATE-CCL                                             _______
152        3. STATE-SWITCHED                                        _______
153        4. STATE-SPECIAL                                         _______
154
155 C5. 520-526 - TOTAL OTHER MISC REV                                    0
156     a. INTERST - OTHER MISC REV                                  _______
157     b. STATE - OTHER MISC REV                                    _______
158
159 C6. 527-528 - TOTAL B&C REV                                           0
160     a. INTERST - BILLING AND COLLECTION REV                      _______
161     b. STATE - BILLING AND COLLECTION REV                        _______
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113 ------------------------------------------------------------------------
114
115 B7. NET RETURN ON MARKETING PLANT INVESTMENT *                    _____
116
117     * NET RETURN = INVESTMENT SPECIFICALLY RELATED TO
118     MARKETING ACTIVITY, LESS RESERVES, TIMES THE
119     AUTHORIZED RATE OF RETURN (PLUS ADJUSTMENT FOR IDC
120     AND ITC, IF APPLICABLE).
121
122 B8. OTHER OVERHEAD                                                 _____
123     (FIT, SIT & OTHER INDIRECT EXPENSES AND TAXES
124     WHICH WOULD BE ALLOCATED INDIRECTLY BY PART 36 AS
125     A RESULT OF THE MARKETING EXPENSE ALLOCATION. USE
126     THE STATUTORY TAX RATE FOR THE DATA SUBMITTED).
127
128 B9. TOTAL REVENUE REQUIREMENT (MARKETING)                          0
129     (SUM OF LINES B4 THRU B9 TOTALS)
130
131 ########################################################################
132     APPENDIX B - SECTION 3
133
134     -PART 31 OPERATING REVENUE ACCOUNTS
135      (BILLED REVENUES AS DEFINED IN PARTS 36/67)
136 ------------------------------------------------------------------------
137 C1. 500-506 - LOCAL SVC REV                                        _____
138
139 C2. 510-516 - INTERST TOLL REV                                    _____
140
141 C3. 510-516 - STATE TOLL REV                                      _____
142
143 C4. 508-509 - TOTAL ACCESS REV                                    0
144     a. 508 - TOTAL INTERST ACCESS REV                             0
145        1. 508.1    - INTERST-SLC                                  _____
146        2. 508.2(a) - INTERST-CCL                                  _____
147        3. 508.2(b) - INTERST-SWITCHED                             _____
148        4. 508.3    - INTERST-SPECIAL                              _____
149     b. 509 - TOTAL STATE ACCESS REV                               0
150        1. STATE-SLC                                               _____
151        2. STATE-CCL                                               _____
152        3. STATE-SWITCHED                                          _____
153        4. STATE-SPECIAL                                           _____
154
155 C5. 520-526 - TOTAL OTHER MISC REV                                0
156     a. INTERST - OTHER MISC REV                                   _____
157     b. STATE - OTHER MISC REV                                     _____
158
159 C6. 527-528 - TOTAL B&C REV                                       0
160     a. INTERST - BILLING AND COLLECTION REV                       _____
161     b. STATE - BILLING AND COLLECTION REV                         _____
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Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

EX PARTE RULES FOR CEI PLANS AND REQUESTS FOR WAIVER OF CEI REQUIREMENTS

Released: May 27, 1988

Several Bell Operating Companies (BOCs) and American Telephone and Telegraph Company (AT&T) have filed Comparably Efficient Interconnection (CEI) plans to offer specific enhanced services on an unseparated basis. Such CEI plans describe the proposed service, as well as the carrier's plans for complying with the nonstructural safeguards developed in the Computer III proceeding (*Phase I Order*, 104 FCC 2d 958 (1986), *modified on reconsideration*, 2 FCC Rcd 3035 (1987), *further reconsideration*, 3 FCC Rcd 1135 (1988), *Phase II Order*, 2 FCC Rcd 3072. *modified on reconsideration*, 3 FCC Rcd 1150 (1988)). The Commission must approve the CEI plan before the carrier can begin offering the service. Carriers also occasionally file requests for waiver of the CEI requirements. (See "Pleading Cycle Established for Comments on Bell Atlantic's Petition for Waiver of CEI Requirements", FCC Public Notice, DA 88-510, released April 13, 1988; "Pleading Cycle Established for Comments on New England Telephone's Petition for Waiver of CEI Requirements and Request to Permit Interim Unseparated Marketing", FCC Public Notice, DA 88-728, released May 16, 1988.) This Public Notice clarifies the *ex parte* rules for CEI proceedings and CEI waiver requests.

Proceedings concerning CEI plans and requests for waiver of the CEI requirements filed with the Commission are analogous to Rule Making proceedings and thus are treated as "non-restricted" under the Commission's *ex parte rules*. *See* 47 C.F.R. §§ 1.1200(a), 1.1206 (1987); 2 FCC Rcd 6053, 6055, para. 15 (1987). *Ex parte* presentations in these unrestricted proceedings are subject to the Commission's "permit but disclose" rules (47 C.F.R. § 1.1206).

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Bell Atlantic	AAD 7-1599
BellSouth	AAD 7-1601
	AAD 7-1695
U S West, Inc.	AAD 7-1610
Pacific Telesis	AAD 7-1611
Southwestern Bell Corp.	AAD 7-1657
NYNEX	AAD 7-1680
Ameritech	AAD 7-1696

Accounting Plans for Nonregulated
Activities Conducted During 1987

MEMORANDUM OPINION AND ORDER

Adopted: May 20, 1988; Released: June 10, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. During 1986 and 1987, the Bell Operating Companies (BOCs) filed plans describing the manner in which they would separate the costs of certain nonregulated activities from the costs of their regulated operations. These cost allocation plans were based on the Uniform System of Accounts (USOA) contained in Part 31 of the Commission's Rules, and are referred to herein as the "Part 31 plans." Because the issues involved in the Part 31 plans are similar, we will consider them in one consolidated proceeding. However, before we review the reasonableness of the Part 31 plans, we require the BOCs to file additional information.

II. BACKGROUND

2. In the *Computer III* [1] and *BOC Structural Relief* [2] proceedings, the Commission replaced the structural separation requirements of Section 64.702 of the Commission's Rules (the *Computer II* rules) with nonstructural safeguards. One safeguard is the requirement that BOCs desiring to provide enhanced services or customer premises equipment (CPE) must obtain approval of manuals which separate their regulated costs from the costs of nonregulated activities. In the *Joint Cost Order*, [3] the Commission established principles governing carriers' separation of regulated and nonregulated costs. The Commission also adopted rules pertaining to transfers of assets and provision of services between the regulated entities and their nonregulated affiliates. Finally, the Commission required the BOCs to file, by September 1, 1987, manuals showing the manner in which they proposed to implement the cost allocation standards. The cost manuals were to become effective on January 1, 1988, after an opportunity for public comment thereon, and were to be based on the USOA contained in Part 32 of the Rules, which became effective January 1, 1988. In the *Joint Cost Order*, the Commission recognized that some BOCs might wish to implement structural relief before January 1, 1988. Accordingly, the Commission stated that a BOC desiring to implement structural relief in 1987 must file a cost manual based upon the then-effective Part 31 USOA.[4]

3. During the pendency of the proceedings referenced in para. 2, the BOCs requested permission to conduct enhanced services planning or provide CPE on a nonseparated basis before they had an approved cost manual. Bell Atlantic, for example, requested permission in November 1986 to conduct planning for the provision of enhanced services, and filed a cost allocation plan pertaining to that activity.[5] We declined to review that cost plan. Instead, we required Bell Atlantic to file a Part 31 cost allocation plan based upon the principles established in the *Joint Cost Order*, and stated that this plan would be subject to public comment and Common Carrier Bureau review.[6] Several BOCs requested permission to engage in limited marketing of CPE on a nonseparated basis. These BOCs were likewise required to file a Part 31 cost allocation plan based upon the principles established in the *Joint Cost Order*.[7] A total of eight Part 31 plans were filed, and all were placed on public notice.[8]

4. On December 28, 1987, we conditionally approved the BOCs' Part 32 manuals, subject to the filing of additional information and explanation.[9] We did not rule on the Part 31 plans at that time, because those plans did not address all of the BOCs' nonregulated activities and approval of a comprehensive cost allocation manual was a precondition to their relief from the structural separation requirements.[10]

III. DISCUSSION

5. In the *Joint Cost Order*, the Commission anticipated that a BOC might file a Part 31 manual providing a comprehensive description of the manner in which it would separate its regulated and nonregulated costs under the Part 31 USOA. None of the BOCs filed such a manual. Rather, they filed the Part 31 plans providing allocation procedures for certain limited nonregulated activities. Those plans have been superseded by the Part 32 cost allocation manuals.

6. Although the Part 31 plans are no longer effective, the issues raised by the plans are not moot. The matters addressed by the parties remain relevant to our administration of the *Joint Cost* rules, and the costs allocated under the plans remain subject to review and audit. However, we recognize that the Part 31 plans cover only a limited amount of costs related to the provision of CPE and enhanced services planning, and that such activities may have been conducted only for a limited time during 1987. It may be that these activities involved so few costs that extensive analysis of the Part 31 plans would be an imprudent use of administrative resources. Accordingly, to enable us to assess the need for further proceedings in those matters, we require the BOCs to file an accounting of the cost allocations made under their Part 31 plans in 1987. We will than observe the extent to which costs were allocated to the nonregulated activities which the BOCs provided, and determine whether further or more detailed analysis is warranted.

7. Accordingly, each BOC must file, within 60 days of the release of this *Memorandum Opinion and Order*, an account-by-account analysis showing the extent to which costs were allocated to the nonregulated activities covered by its Part 31 plan. For each account affected by the plan, the analysis should show (1) the total amount of directly assigned costs; (2) the total amount of common costs; (3) the amount directly assigned to the subject nonregulated activities; and (4) the amount of common costs allocated to the subject nonregulated activities. Each BOC should provide a copy of its filing to parties that commented on its plan. We will accept comments on the BOCs' filings within 20 days thereof. Reply comments are due 10 days thereafter.

IV. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and (j) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i) and (j), that the BOCs are directed to file the information described in para. 7, *supra*.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Amendment of Section 64.702 of the Commission's Rules and Regulations (*Third Computer Inquiry*), 104 FCC 2d 958 (1986) (*Computer III Phase I Order*), *recon.* 2 FCC Rcd 3035 (1987), *further recon.* 3 FCC Rcd 1135 (1988); 2 FCC Rcd 3072 (1987) (*Computer III Phase II Order*), *recon.* 3 FCC Rcd 1150 (1988).

[2] Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, 2 FCC Rcd 143 (1987), *recon.* 3 FCC Rcd 22 (1988).

[3] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *recon.* 2 FCC Rcd 6283 (1987), *petitions* for further recon. pending.

[4] Joint Cost Order, 2 FCC Rcd at 1328.

[5] The Commission anticipated that the BOCs might desire to engage in enhanced services planning pending adoption of a decision in the Joint Cost proceeding, and established as a precondition thereof the filing of a cost allocation plan consistent with one of the proposals described in the Noticeof Proposed Rulemaking in that proceeding. See Computer III Phase I Order,104 FCC 2d at 1075-6.

[6] See The Bell Atlantic Telephone Companies, Cost Allocation Plan for Enhanced Services Planning, 2 FCC Rcd 817 (1987).

[7] See, e.g., Petition of U S West for Expedited Relief from and Limited Waiver of Computer II Structural Separation Requirements, 2 FCC Rcd 1581 (1987).

[8] See, e.g., Public Notice, Ameritech, BellSouth, NYNEX and Southwestern Bell File Interim Cost Allocation Manuals, 2 FCC Rcd 5575 (1987).

[9] See, e.g., NYNEX Telephone Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, 3 FCC Rcd 81 (1988).

[10] No BOC filed a comprehensive Part 31 cost allocation manual. Thus, we did not conduct the review process for such manuals described in para. 235 of the Joint Cost Order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

CALOOSA TELEVISION CORPORATION — File No. BPCT-860702KG

For Modification of Facilities
of Station WEVU(TV), Naples, Florida

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 1988; Released: June 10, 1988

By the Commission:

1. The Commission has before it for consideration: (a) the above-captioned application of ABC network affiliate Caloosa Television Corporation (Caloosa), licensee of Station WEVU(TV), Channel 26, Naples, Florida, for a modification of facilities, (b) an informal objection to the grant of that application, filed by the National Audubon Society (Audubon), and (c) related pleadings.

2. Caloosa currently operates Station WEVU(TV) from a site in Bonita Springs, Florida, with a tower 710 feet above average terrain (HAAT) and with an effective radiated visual power (ERP) of 2750 kW. The station's existing site meets all Commission spacing requirements. In order to become more competitive with other stations in the area, and since it is unable to increase the height of its present tower due to Federal Aviation Administration (FAA) limitations, Caloosa proposes to move its transmitter to a site 5.5 miles southwest of Corkscrew, Florida. It also proposes to increase the height of its tower to 1205 feet HAAT and to increase its ERP to 5000 kW. The proposed site would be located within one of the three areas in the vicinity of the Southwest Florida Regional Airport that are being encouraged by the local airport authority and by the FAA. The site is 317.5 kilometers (197.3 miles) from the site of an unbuilt co-channel station located in Daytona Beach, Florida, of which Life Style Broadcasting, Inc. (Life Style) is the permittee. Since Section 73.610(b) of the Commission's Rules requires a minimum separation of 329.0 kilometers (204.5 miles) between co-channel UHF stations located in Zone 1, Caloosa's proposed site would be 11.5 kilometers (7.1 miles) short-spaced. Accordingly, it seeks a waiver of Section 73.610(b).

3. In support of its waiver request, Caloosa argues that the proposed modification would result in a gain area encompassing 60,523 persons with no corresponding loss area and that it would provide a first off-the-air ABC network service to 34,529 persons in an area of 538 square miles. Caloosa contends that there are no other sites nearby where it could construct a tall tower to permit it to broadcast a competitive signal in the Fort Myers-Naples area: It notes that both of its local network competitors operate with towers in excess of 1500 feet above mean sea level. In addition, Caloosa argues that it would provide equivalent protection to the Daytona Beach station.[1] Initially, Life Style opposed the application, but it withdrew its objection on November 19, 1986, after Caloosa agreed to install and operate precision frequency control equipment to eliminate any objectionable interference that might occur.

4. Caloosa stated that grant of its application would be a major environmental action as defined by Section 1.1307 of the Rules, and it did, in fact, submit an environmental assessment on the basis that the proposed tower exceeded 300 feet. Although our former rules called for an assessment on those grounds, the revised rules applicable to Caloosa's application do not. In any event, the assessment submitted indicated that Caloosa proposes a guyed steel tower supporting a top-mounted antenna resulting in the proposed 1205 feet HAAT. The licensee further contended that the proposed construction has not been a source of controversy on environmental grounds and that the site is not in a wilderness area, wildlife preserve, or natural flyway for birds. It added that the site is not of scenic, cultural, historic, architectural, archeological or recreational value. Caloosa also argued that construction will not create a substantial change in the character of the land on which the tower will be built and will not adversely affect natural fauna at the location. Further, the applicant agreed to work with local and federal environmental groups to arrive at a mutually acceptable plan for lighting and marking the tower and its guy wires in order to enhance visibility.

5. On November 17, 1986, Audubon filed its informal objection to the grant of Caloosa's application. In support of its objection, Audubon argues that the proposed site is adjacent to Audubon's Corkscrew Swamp Sanctuary, which encompasses an 11,000-acre swamp that is a refuge for the wood stork, several species of heron, and other wildlife. Audubon notes that the wood stork has been listed as an endangered species under the Endangered Species Act since 1984 and that there are only an estimated 5000 pairs of the birds in Florida and Georgia. It further states that three species of heron are classified as "Species of Special Concern" by the State of Florida. Audubon maintains that the location of Caloosa's proposed tower would lie directly in the flight path between the birds' breeding colonies and their feeding grounds. Audubon argues that the storks' mode of flying makes them vulnerable to collisions with the tower and with its supporting guy wires. Audubon contends, therefore, that Caloosa's statement that the proposed site is not located in a natural flyway for birds is incorrect. Audubon urged the Commission to consult with the U.S. Fish and Wildlife Service in assessing the environmental impact of the construction of the tower, consistent with the National Environmental Policy Act (EPA). As a result of Audubon's objection, Caloosa amended its Environmental Assessment on November 19, 1986, to recognize the proximity of its proposed site to the Corkscrew Swamp Sanctuary and to a rookery for the wood stork. The licensee now states that it is willing to work with local environmental groups and with the Fish and Wildlife Service to arrive at a mutually acceptable plan for marking the tower in order to protect the birds.

6. On December 17, 1986, we referred Audubon's concerns to the Fish and Wildlife Service of the U.S. Department of the Interior (Interior), pursuant to 50 C.F.R. Section 402.14(c).[2] On January 27, 1987, Interior issued a Biological Opinion with respect to Caloosa's application.

Interior prefaced its report by stating that its opinion satisfied the consultation requirements of Section 7(a)(2) of the Endangered Species Act. Interior stated that the site of the proposed tower is within a known flight path from the Corkscrew rookery to adjacent feeding areas. It concluded that some wood stork mortality may result from birds colliding with the tower or its guy wires and that, for that reason, Caloosa's proposed site is not a preferred location. Interior went on to state, however, that the collisions would likely occur only at times of poor visibility and would not result in significant mortality that would jeopardize the continued existence of the breeding population of the bird. Nevertheless, Interior recommended that no further towers be constructed in the immediate area and that future antennas be located on the WEVU(TV) tower, if possible. On April 28, 1987, Caloosa submitted a copy of a resolution of the Board of Zoning Adjustments of Lee County, Florida (Zoning Board), whereby construction of the tower was approved. Zoning Board recognized Interior's report and authorized construction conditioned on: (1) the installation of warning balls on the guy wires and tower; (2) improvement of the area around the tower by providing a throughway for wildlife and by creating wetlands, if necessary; and (3) the monitoring of wood stork mortality at the site and the establishment of a mitigation program, if needed.

DISCUSSION

7. We turn first to Caloosa's request for waiver of our minimum spacing requirements. The Television Table of Assignments was established so that stations in a given community could operate with maximum power and antenna height without creating objectionable interference to neighboring stations. To maintain the integrity of the Table, it was necessary to establish minimum mileage separations and to allow only limited deviations from those separations. Those spacing requirements presumptively serve the public interest, and applicants seeking waivers to operate from short-spaced sites are required to demonstrate that the public interest will be better served by a waiver in the circumstances presented than by following the terms of the rule. In the past, factors we have evaluated when acting on such waiver requests have included: (1 the unsuitability of the existing site, either in terms of the economic viability of the station, in technical terms, or in a licensee's inability to reach areas containing a significant number of viewers who lack service, a network service, or "independent" service; *see Roy H. Park Broadcasting, Inc.*, 45 R.R. 2d 1083 (B/c. Bur. 1972); *WSET, Inc.*, 80 F.C.C. 2d 233 (1980); (2) the magnitude of the short-spacing; *compare Clay Broadcasting Corp.*, 50 R.R. 2d 1273, *recon. denied*, 51 R.R. 2d 916 (1982) (approval of 5-mile shortfall out of 190 required) *with West Michigan Telecasters, Inc.*, 22 F.C.C. 2d 943, *recon. denied*, 26 F.C.C. 2d 668 (1970), *aff' d*, 460 F.2d 883 (D.C. Cir. 1972) (denial of 15-mile shortfall out of 170 required); (3) the nature and extent of any predicted loss of service that would result from a grant of the short-spacing;[3] *see Roy H. Park Broadcasting, Inc., supra* ; and *Blair Broadcasting of California, Inc.*, 55 R.R. 2d 619 (MMB 1984); (4) the aeronautical and environmental benefits and drawbacks of locating a tower in a particular area; *see Roy H. Park Broadcasting, Inc., supra* ; (5) the concerns, if any, expressed by the licensee(s) to which short-spacing would result; *see WSET, Inc., supra* ; and *Blair Broadcasting of California, Inc., supra* ; and (6) the extent to which the licensee obtained its license knowing there were spacing restraints imposed in a Rule Making proceeding; *see Townsend Broadcasting Corporation, supra* ; and *WLCY - TV, Inc.*, 16 F.C.C. 2d 506 (Rev. Bd. 1969), *review denied*, 25 F.C.C. 2d 832 (1970). We shall continue to consider these factors, as may be appropriate, when acting on requests for waivers of the spacing requirements.

8. We adopt one change here. In the future, we shall also consider whatever technical proposal an applicant might make to reduce or eliminate objectionable interference. This is a departure from our past policy of considering technical means of reducing or eliminating predicted interference, only after other public interest considerations outweighing the short-spacing have been demonstrated. *Carolina Broadcasting Company*, 18 F.C.C. 2d 482, 484 (1969). We believe that relegating evaluation of this factor until after the shortfall has been approved unduly minimizes its importance. Henceforth, consistent with the discussion below, that factor will be evaluated along with other relevant factors.

9. With regard to the unsuitability of an existing site, we established in *Townsend Broadcasting Corporation*, 62 F.C.C. 2d 511, 512 (1976), the requirement that applicants proposing short-spaced sites first make a threshold showing that suitable non-short-spaced sites were unavailable. This has also been interpreted as requiring that less short-spaced sites also be unavailable. *See Edens Broadcasting, Inc.*, 2 FCC Rcd 689, 693 (Rev. Bd. 1987). In the case of an existing station, the applicant must also show that its present site is no longer suitable. *Megamedia*, 67 F.C.C. 2d 1527, 1528 (1978). The reasonableness of our threshold policy has been recognized by the Court as recently as February 1987, in *Orange Park Florida T. V., Inc. v. F. C. C.*, 811 F.2d 664 (D.C. Cir. 1987), where our earlier action denying the applicant's request for waiver of Section 73.610 of the Rules was affirmed. *See also, North Texas Media, Inc. v. F. C. C.*, 778 F.2d 28 (D.C. Cir. 1985).

10. We do not propose to abandon generally the requirement that licensees operating from fully spaced sites make the threshold showing of the unsuitability of its existing site or other fully spaced sites, as required and defined by *Townsend*, when they seek a waiver of our spacing requirements. In this case, however, we have reviewed the relevant factors discussed below and conclude that a grant of the application would serve the public interest, despite Caloosa's failure to establish the unsuitability of its existing site under the *Townsend* standard. We reach that conclusion because of the unusual combination of public interest factors presented here. The licensee's present site is located in an area where towers cannot exceed its present HAAT of 710 feet because of FAA restrictions. Caloosa has shown that, because of coverage problems due to its present location and facilities, it is at an economic disadvantage compared to the other network affiliates in the market, which operate from taller towers that are more centrally located. In this connection, we note that the Fort Myers-Naples area is the 107th-ranked market in the country. Caloosa's chief competitors are Fort Myers Stations WINK-TV, a CBS network affiliate operating on Channel 11, and WBBH-TV, an NBC network affiliate operating on Channel 20. Although Caloosa has not provided specific information as to its relative position in the market, both competitors serve more than 340,000 television households, while Station WEVU reaches only 203,900. In seeking a site that would permit a higher antenna, Caloosa has shown that it is severely

limited by the proximity of the Gulf of Mexico and extensive swamp areas. Importantly, there has been local encouragement of the development of just three areas for the location of tall towers in the vicinity of Southwest Florida Regional Airport that have been approved by the FAA. Moreover, Caloosa's proposed site is the least short-spaced of those locations from which a tall tower could be utilized. As stated above, operation from the proposed site would create a gain area encompassing more than 60,000 persons and would provide a first off-the-air ABC network service to more than 34,000 persons. Significantly, these gains do not come at the expense of others: there will be no loss area created. These facts carry considerable weight in this case. In addition to the gains resulting from Caloosa's proposal, others will benefit as well. Beasley Broadcasting of Western Florida, Inc., licensee of Station WRXK(FM), Bonita Springs, Florida, proposes to mount that station's transmitting antenna on Caloosa's tower. That move will increase Station WRXK's height above average terrain from 466 to 1,119 feet, resulting in better coverage for that station, as well as the gains from Caloosa's proposed operation. Further, while the shortfall here is not minimal, it is, nevertheless, within the range of other short-spacings that have been approved. *Peninsula Broadcasting) Corp.*, 45 R.R. 1662 (1964) (8.4-mile shortfall out of 170 required); *Midcontinent Broadcasting Co.*, 45 F.C.C. 1798 (1964) (14.2-mile shortfall out of 190 required). Moreover, Life Style, the only party to which objectionable interference would be theoretically caused, no longer objects to the proposal now that Caloosa has agreed to install and operate precision frequency control equipment. As noted, environmental factors are also raised and will be considered fully below. On balance, however, we believe that the slight environmental disadvantage of locating at the proposed site is outweighed by all of the other factors expressed above when considered cumulatively. Accordingly, we believe that grant of Caloosa's request for waiver of Section 73.610(b) would be in the public interest.

11. Sections 1.1307(a) and (b) of the Rules provide that an action may have a significant environmental effect within the meaning of the National Environmental Protection Act if it falls within one of seven situations. Consistent with Council on Environmental Quality requirements, actions not so listed are deemed to be "categorically excluded" from environmental processing because they normally have no significant impact on the environment. *See Amendment of Environmental Rules*, 60 R.R. 2d 13, 15 (1985). To assist the Commission in the performance of its responsibilities in this area, however, Section 1.1307(c) provides a procedure whereby a third party can bring to the Commission's attention an action which might have a significant environmental effect, though not specifically listed in the Rules. If the staff agrees, the applicant will be required "to prepare an (Environmental Assessment), which will serve as the basis for the determination to proceed with or terminate environmental processing." Here, the proposed site does not fall within one of the seven situations for which an Environmental Assessment is required. Audubon alleges, however, that the site is in the middle of a flyway between the breeding colonies and the feeding grounds of wood storks and other threatened birds. In determining whether the action might have a "significant environmental effect" pursuant to Section 1.1307(c), we must rely on responsible groups and appropriate governmental agencies, as well as the applicant itself, to furnish us with the information for us to evaluate. We will therefore consider Caloosa's amended Environmental Assessment, along with facts presented by Audubon, a national organization devoted to the protection of endangered wildlife, and the evaluation of those facts presented by Interior, whose charge it is to see that the habitat of threatened and endangered species is preserved.

12. The question now becomes whether, after review of Caloosa's Environmental Assessment and other supporting data, we believe that the tower proposal would, in fact, have a significant impact on the environment. We believe it would not. First, we note that the only environmental issue raised by this application is whether the location of the proposed tower in a flyway would have an adverse impact on the area's migratory fowl. Although Interior states that the proximity of the proposed site to the Corkscrew rookery makes it not a preferred site for the tower, it nevertheless concludes that collisions of the birds with the structure and guy wires would be too infrequent to jeopardize the continued existence of the breeding population of the wood stork. It appears that the greatest danger to the bird population would be during periods of low visibility. Audubon relies on studies of bird strikes with power lines to show that collisions would be likely with Caloosa's tower. Unlike power lines, however, guy lines and the tower itself are significantly more visible, according to Interior, because of their greater thickness, especially with the markings and lighting proposed. Nevertheless, Interior has called for Caloosa to report wood stork mortality at the proposed tower, and grant of the application will be subject to an appropriate condition. As noted, Caloosa has recognized the potential environmental problem and is willing to work with local environmental groups and Interior to arrive at a mutually acceptable plan for lighting and marking the tower with blue lights, streamers, and balls in order to protect the birds. We further note that the Zoning Board has also evaluated the environmental concerns of Audubon and has, nonetheless, approved construction of the tower. Caloosa has apparently accepted that approval, subject to several conditions meant to limit the impact of the structure on the migratory fowl population, and we expect Caloosa to carry out the Zoning Board's conditions in good faith. We believe that Caloosa's observance of those conditions as well as its willingness to work with interested parties will be sufficient to meet the environmental concerns of Audubon. We therefore conclude, pursuant to Section 1.1308(d) of the Rules that the proposed tower would not have a significant impact on the environment.

13. Accordingly, IT IS ORDERED, That the informal objection filed by the National Audubon Society IS DENIED, Caloosa Television Corporation's request for waiver of Section 73.610(b) of the Rules IS GRANTED, and its application IS GRANTED subject to the following condition:

> In accordance with the terms of the Biological Opinion of the U.S. Fish and Wildlife Service of the Department of the Interior (Interior) issued January 27, 1987, the licensee must report to Interior within 48 hours of the mortality of a wood stork at the WEVU(TV) tower. Reports should be sent to Interior at 2747 Art Museum Drive, Jacksonville, Florida 32207. Additionally, any wood stork specimens recovered must be sent to Interior at the above address.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] The term "equivalent protection" means the protection from electromagnetic interference equivalent to the interference protection provided by our power, height, and separation requirements, assuming maximum station facilities. To date, however, the Commission has adopted standards for judging the efficacy of equivalent protection only for co-channel VHF stations, and the concept cannot, therefore, be applied to the UHF station involved here. *See New Jersey Public Broadcasting Authority*, 50 R.R. 2d 251 (1981).

[2] On November 24, 1986, the Commission also requested a formal consultation with the Department of the Interior with respect to the application for a construction permit for Station WHEW(FM), Fort Myers, Florida, to build a new tower in the same area proposed by Caloosa. On June 4, 1987, that station became licensed to operate at the site, conditioned, as recommended by Interior, on the licensee's reporting of wood stork mortalities at the tower to that agency.

[3] In this regard, we will evaluate the extent to which a proposal creates or eliminates unserved or underserved areas. *See Hall v.* F.C.C., 237 F.2d 567, 572 (D.C. Cir. 1956); Television Corporation of Michigan v. F.C.C., 294 F.2d 730, 732 (D.C. Cir. 1961); and KTVO, Inc., 57 R.R. 2d 648 (1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

Local Exchange Carriers'
Individual Case Basis
DS3 Service Offerings

ORDER

Adopted: May 20, 1988; Released: May 23, 1988

By the Chief, Common Carrier Bureau:

1. On March 28, 1988, the Common Carrier Bureau released a *Designation Order* [1] in the above-styled docket. The *Designation Order* required various local exchange carriers (LECs) to file direct cases addressing certain issues no later than April 26, 1988. Pleadings opposing the direct cases were to be filed no later than May 13, 1988, and rebuttals were to be filed no later than May 24, 1988. Southwestern Bell Telephone Company (Southwestern) has filed a motion requesting an extension of time, until May 31, 1988, to file its rebuttal.[2]

2. Southwestern argues that it has only seven days to file its rebuttal, since it did not receive all of the oppositions until May 17, 1988. Southwestern Motion at 1-2. Southwestern contends that the public interest in having a complete record would be served if the Bureau allows an additional seven days for Southwestern to file its rebuttal. *Id.* at 2. Southwestern notes that it has discussed its motion with the other regional Bell Operating Companies which have filed direct cases and is authorized to state that they concur in Southwestern's motion. *Id.* Southwestern further notes that since the other LECs who have filed direct cases are subject to the same conditions and time constraints as Southwestern, the Bureau may wish to extend the time for filing rebuttals for them as well. *Id.* at 2-3.

3. We find that Southwestern has shown good cause for extending the deadline for filing rebuttals. We therefore grant all LECS subject to the *Designation Order* an extension of time until May 31, 1988, to file rebuttals to pleadings opposing their direct cases.

4. Accordingly, IT IS ORDERED that the motion for extension of time of Southwestern Bell Telephone Company IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, Order Designating Issues for Investigation, CC Docket No. 88-136, DA 88-424, released Mar. 28, 1988 (*Designation Order*).

[2] Southwestern Motion for Extension of Time to File Rebuttal, filed May 19, 1988 (Southwestern Motion).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

US West Revisions to Tariff F.C.C. No. 1	Transmittal Nos. 153, 156, and 157
GTE Telephone Operating Companies Revisions to Tariff F.C.C. No. 1	Transmittal Nos. 386 and 389
Southwestern Bell Telephone Company Revisions to Tariff F.C.C. No. 68	Transmittal Nos. 1645 and 1647
Ameritech Services Revisions to Tariff F.C.C. No. 2	Transmittal Nos. 176, 177, and 178
Pacific Bell Revisions to Tariff F.C.C. No. 128	Transmittal No. 1344

ORDER

Adopted: May 23, 1988; Released: May 26, 1988

By the Deputy Chief, Common Carrier Bureau:

1. By the above-referenced transmittals, various local exchange carriers (LECs) have proposed revisions to their tariffs for access services to establish rates and charges for Special Access Individual Case Basis (ICB) High Capacity DS3 offerings.[1] The revisions are scheduled to become effective on dates ranging from May 27, 1988, to June 16, 1988.[2]

2. On March 28, 1988, the Bureau released an Order initiating an investigation of a number of LECs' proposed ICB rates, designating for investigation issues concerning the LECs' continued use of ICB rates for DS3 offerings, and establishing a pleading cycle. [3] The above-referenced transmittals raise the same issues as those transmittals subject to our *Designation Order*. Therefore, the instant transmittals will be subject to the outcome of that investigation. We also grant the LECs listed above special permission to advance the effective dates of these transmittals.

3. Accordingly, IT IS ORDERED that US West, Tariff F.C.C. No. 1, Transmittal Nos. 153, 156, and 157, GTE Telephone Operating Companies, Tariff F.C.C. No. 1, Transmittal Nos. 386 and 389, Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1645 and 1647, Ameritech Services, Tariff F.C.C. No. 2, Transmittal Nos. 176, 177, and 178, and Pacific Bell, Tariff F.C.C. No. 128, Transmittal No. 1344, are subject to the investigation instituted in CC Docket No. 88-136.

4. IT IS FURTHER ORDERED that the local exchange carriers listed in paragraph 3, *supra*, may file tariff revisions, to be effective on not less than one day's notice, in order to advance the effective dates of the above-referenced transmittals. For this purpose, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59, and assign Special Permission No. 88-239.

5. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions ARE SUSPENDED for one day.

6. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, all local exchange carriers subject to this investigation shall keep accurate account of all amounts received pursuant to Individual Case Basis rates for DS3 services which are the subject of such investigation.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] We note that while the LECs' filings also proposed ICB rates for other services, this Order deals only with the proposed ICB rates for DS3 and DS3-equivalent services.

[2] No petitions have been filed to reject, suspend, or investigate these transmittals.

[3] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, DA 88-424, released Mar. 28, 1988 (*Designation Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 85-166

In the Matter of

Investigation of Special Access Tariffs of Local Exchange Carriers — Phase III, Part 1

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: May 26, 1988; Released: May 27, 1988

By the Deputy Chief, Common Carrier Bureau:

I. BACKGROUND

1. On January 15, 1988, the Common Carrier Bureau released an Order[1] requiring the Bell Operating Companies (BOCs) to calculate refunds due Other Common Carriers (OCCs) relating to charges for special access services for the period November 13, 1984, through June 3, 1985. The Bureau further directed the BOCs to file this information, including the supporting data, not later than February 29, 1988. The NYNEX Telephone Companies (NYNEX), Southwestern Bell Telephone Company (Southwestern), and the Ameritech Operating Companies (Ameritech) filed a joint motion requesting an extension of time, until March 30, 1988, to file the information requested by the Bureau.[2] US West filed a motion for extension of time, until June 1, 1988, to file the requested information. [3] On February 29, 1988, the Bureau released an Order[4] granting all BOCs an extension of time until June 1, 1988, to submit the information requested by the *January 15 Order*.

2. On March 1, 1988, MCI Telecommunications Corporation (MCI) filed a motion for reconsideration and rescission of the *February 29 Order*.[5] US West filed a response,[6] and MCI replied.[7] RCA filed comments in support of MCI's motion for reconsideration and rescission.[8]

II. SUMMARY OF PLEADINGS

3. MCI first argues that US West's motion for a three-month extension was procedurally defective because it violated Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, requiring oral notification for motions for extension of time filed less than seven days prior to the filing deadline. MCI Motion at 2-3. Further, MCI contends, the Bureau should reconsider and rescind its *February 29 Order* because US West failed to justify its request for a three-month extension. *Id.* at 5. According to MCI, US West did not advance any valid reason for the Bureau to distinguish its motion from the joint motion for a one-month extension. *Id.* at 4-5.

4. US West responds that its motion adequately explained why a one-month extension would be insufficient. US West Response at 6. In addition, US West contends, the oral notice provisions of Section 1.46 are not applicable to its motion because, technically, there are no parties to the proceeding instituted with the *January 15 Order*, other than BOCs who were ordered to provide data and invited to comment. *Id.* at 8. Finally, US West submits that a three-month extension will not harm MCI and other OCCs, as they are protected by the accumulation of interest from the Commission's accounting order. *Id.* at 9.

5. MCI replies that despite its caption, US West's response is an opposition to MCI's motion. MCI Reply at 2. As such, MCI asserts, the opposition was filed five days after the deadline set by Section 1.45 of the Commission's Rules, 47 C.F.R. § 1.45. *Id.*

III. DISCUSSION

6. As an initial procedural matter, we conclude that MCI is correct in its contention that US West's motion for a three-month extension of time was filed in violation of Section 1.46 of the Commission's Rules.[9] Since US West filed its motion six days before the filing deadline, it was required to contact MCI's attorneys orally. As US West admits, it failed to do so.

7. Having reviewed MCI's substantive arguments, however, we conclude that despite US West's failure to notify MCI orally, our grant of the three-month extension in the *February 29 Order* was warranted.[10] MCI will not be harmed by such an extension, since it will be entitled to receive interest if a refund is ordered in the CC Docket 85-166 proceeding. Further, the grant of additional time will help assure accurate refund calculations.

IV. CONCLUSION AND ORDERING CLAUSE

8. Based upon the foregoing discussion, we conclude that we did not err in granting the Bell Operating Companies a three-month extension to file the information requested by the *January 15 Order*.

9. Accordingly, IT IS ORDERED that the motion for reconsideration and rescission filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carl D. Lawson
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Phase III, Part 1, Order Inviting Comments and Requesting Data, 3 FCC Rcd 176 (1988) (*January 15 Order*).

[2] NYNEX, Southwestern Bell, and Ameritech Motion for Extension of Time, filed Feb. 18, 1988 (Joint Motion). Comments in support of the joint motion were filed by Pacific Telesis, BellSouth, and the Bell Atlantic Companies.

[3] US West Motion for Extension of Time, filed Feb. 23, 1988 (US West Motion).

[4] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85-166, Order, released Feb. 29, 1988 (*February 29 Order*).

[5] MCI Motion for Reconsideration and Rescission, filed Mar. 1, 1988 (MCI Motion).

[6] US West Response to MCI Motion for Reconsideration and Rescission, filed Mar. 16, 1988 (US West Response).

[7] MCI Reply, filed Mar. 22, 1988 (MCI Reply).

[8] RCA Memorandum in Support of MCI Motion for Reconsideration and Rescission, filed Mar. 14, 1988 (RCA Comments). RCA's comments were accompanied by a motion for leave to file comments in support of MCI's motion.

[9] We note, however, that MCI incorrectly captioned its pleading a "motion for reconsideration and rescission." Since MCI essentially asks the Bureau to reconsider our *February 29 Order* and modify the three-month extension to a one-month extension, the pleading should have been captioned a petition for reconsideration pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106. We exercise our discretion to treat MCI's pleading as a petition for reconsideration, but instruct MCI to caption its pleadings in accordance with the Commission's Rules in the future. We further note that there is no merit to MCI's contention that US West's response to MCI's motion was untimely filed. Whether MCI's pleading is viewed as a motion or as a petition for reconsideration, US West had until March 16, 1988, to file its opposition. *See* Sections 1.4, 1.45, and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.4, 1.45, 1.106. US West made its filing by this deadline.

[10] Although we do not condone failure to comply with the Commission's procedures, we do not believe that the public interest would be served by any attempt to effect a remedy as a result of this deficiency in the US West pleading. In keeping with ousee note 9, *supra*, we admonish US West to comply with Commission procedures in the future.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-140

In the Matter of

Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations	RM-5416 RM-5472

NOTICE OF INQUIRY

Adopted: March 24, 1988; Released: June 2, 1988

By the Commission:

INTRODUCTION

1. The Commission is initiating this proceeding to study the role of FM translators in the radio broadcast service. This action is taken in response to petitions for rule making filed by the National Association of Broadcasters (NAB) and several other parties that raise issues addressing FM translator matters. In its petition, the NAB requests further restrictions on FM translators to prevent their use as a means to expand the service areas of primary FM stations and tightened technical rules to prevent interference from translators to full-service FM stations. The other petitioning parties seek various forms of expansion of the current translator authority, including program origination authority.

2. Our objective in this proceeding is to examine and, where necessary or appropriate, to revise our policy regarding the authorization and operation of FM translators consistent with our overall FM allocations plan. Initially, we wish to make clear that we do not intend to alter our basic policy approach of authorizing FM translators for the purpose of providing service that is supplemental to the service provided by full-service FM stations. We continue to believe that the most effective and efficient means of providing FM service to the public is through the higher-power facilities of full-service stations. In this regard, we seek to consider whether there is any need to modify our rules to ensure that translator stations do not adversely affect the operation of full-service stations. We also intend to consider policy options for expanding the FM translator authority, as suggested by petitioners, to the extent that such policies would be consistent with the secondary nature of this authority. We request public comment on all aspects of our general policies regarding FM translators, as well as specific proposals for rules and regulations to implement any changes in these policies.

BACKGROUND

3. FM translators are low-power stations that receive the signals of a full-service FM station and simultaneously retransmit those signals on another frequency. FM translators were first authorized in 1970 as a means to provide FM service to areas and populations that were unable to receive satisfactory service due to distance or intervening terrain obstructions.[1] While the Commission recognized the benefits of authorizing FM translator service, it also expressed concerns regarding the possible competitive impact such translators could have on full-service FM stations and the effect their authorization could have on the licensing of those stations. In view of these competitive concerns, the Commission adopted rules specifically to restrict FM translator service, ownership, and support. The FM translator rules currently in place are essentially the same as those adopted in 1970.

4. As a secondary service, FM translators currently are intended to supplement, and not serve as a substitute for, full-service stations.[2] Thus, FM translators are subject to rules that specifically restrict their permissible service, ownership, and support.[3] Commercial FM translators are limited to operation on the 20 channels originally reserved for Class A use.[4] Noncommercial translators may operate on any of the 20 channels reserved for noncommercial use (channels 200-220) as well as the 20 Class A commercial channels. Technically, translators are limited to one or ten watts total power output, depending on the area of the country in which they are located,[5] and are subject to the requirement that they may not cause interference to the direct reception by the public of the off-the-air signals of any authorized broadcast stations.[6] Translators may rebroadcast only the signals of a full-service FM station or of another FM translator station received directly over the air.[7] In this regard, the transmissions of each translator must be intended for direct reception by the general public. A translator may not be established solely as a means for relaying the signal of its primary station to a more distant facility.[8] In addition, translators may not engage in program origination, except for 30 seconds per hour to solicit and/or acknowledge contributions to defray installation and operation costs.[9] Commercial advertisements for profit are prohibited except in connection with an acknowledgment of an advertiser's contribution.

5. The current rules also provide certain restrictions on ownership and support of commercial FM translators by commercial FM licensees. Specifically, a commercial translator that is intended to provide service to areas beyond the primary station's 1 mV/m contour and within the 1 mV/m contour of another commercial FM station assigned to a different principal community, will not be authorized to the primary FM station licensee, or to an applicant who receives support from such licensee prior to commencement of translator operations.[10] However, the primary station licensee may financially support the operation and maintenance of such a translator after operations commence.[11] In all other cases, any qualified individual, organized group of individuals, or local civil government body may be licensed to operate a translator within or outside the 1 mV/m contour of the primary station. There are no restrictions on ownership of noncommercial translators.

PETITIONS FOR RULE MAKING

6. Before the Commission are seven petitions for rule making regarding FM translator matters filed by the NAB, AGK Communications, Inc. (AGK),[12] John Davidson Craver (Craver),[13] John S. La Tour (La Tour),[14] Bruce Quinn (Quinn), Communications General Corporation (CGC),[15] and Robert Jacoby (Jacoby).[16] NAB's petition

appeared on Public Notice (RM-5416) on May 14, 1986, and in response sixteen comments, three reply comments, and two informal comments were submitted. The AGK petition appeared on Public Notice (RM-5472) on June 13, 1986, and in response three comments were submitted.[17]

7. *The National Association of Broadcasters Petition.* NAB states that it considers FM translators to be a necessary and beneficial part of broadcast service. However, it contends that the current translator rules do not clearly reflect the Commission's original intent that such stations provide only supplementary service and, as a result, many abuses are occurring. NAB takes the position that translators generally should be used only to fill in the 1 mV/m contours of primary stations and to provide FM service to areas not within the 1 mV/m contour of any full-service FM station. It also believes that the Commission should allow the use of FM translators to retransmit AM radio signals to improve AM service. NAB proposes rule changes that it believes are necessary to strictly align the FM translator rules with these purposes. Its proposals address three separate areas of concern: unfair competitive expansion; technical interference; and AM radio improvement.

8. With respect to competitive expansion, NAB believes that the current ownership and financial support rules, as well as the lack of specific technical standards, provide avenues for the use of translators to expand competitively the service areas of primary stations. NAB states that translators importing distant radio signals into the 1 mV/m contours of full-service FM stations, in many cases through their use as relays, disrupt the balance of competition among, and drain critical revenues from, local stations, particularly in medium and small markets.[18] To restrict the use of translators for competitive purposes, it proposes that any use of translators, by either the primary station or independent entities, that would have the effect of extending the primary station's coverage area into the 1 mV/m contour of another FM station, be prohibited. Further, to prevent the use of translators solely as relays, NAB proposes implementation of community standards to ensure that each translator station will serve a populated area and adoption of specific minimum signal strength requirements to provide for community coverage.

9. To eliminate incentives to use translators to competitively expand the service areas of primary stations, NAB proposes that the Commission specifically prohibit the use of a translator to earn a profit. In addition, it proposes that strict limits on translator program origination be imposed such that only community-sponsored translators would be allowed to broadcast commercial announcements in connection with the acknowledgment of contributions toward station operation and maintenance. NAB also recommends prohibiting primary stations from supporting any translators financially except those whose sole purpose is to fill in areas within their 1 mV/m contours. It argues that this prohibition is needed to prevent primary station support of a translator after commencement of operations in amounts large enough to reimburse the translator licensee for application and construction costs. NAB asserts that this measure also is needed to halt schemes whereby translator licensees circumvent the prohibition against commercial advertising by leasing their translator back to the primary station in consideration for advertising time thereon.

10. Regarding technical interference by FM translators, NAB believes that the current rules prohibiting translators from causing any interference that impairs direct reception of regularly used off-the-air signals not only are inadequate, but also are so vague that they provide no definitive standards.[19] It asserts that many translators are causing interference to full-service stations. NAB takes the position that because any energy radiated in the FM band can potentially cause interference, translators should be subject to technical standards that are as strict as those employed for full-service FM stations. It proposes, therefore, adoption of specific contour overlap or minimum mileage standards and maximum permissible effective radiated power (ERP) levels. NAB also believes that more precise standards for use of directional antennas by translators would reduce their potential for creating interference.

11. Finally, NAB states that positive new uses of FM translators should be explored. In this context, it recommends authorizing FM translators to retransmit AM signals. In its petition, NAB states that this change in the permissible uses of FM translators would enhance the quality of AM radio in furtherance of the Commission's recognized need for improvements in that service. However, in its reply comments, it also states the concern of its Board of Directors that, while this proposal may aid individual stations, a proliferation of FM rebroadcasts of AM programming might lead to an overall diminution of AM radio audiences. Thus, NAB urges the Commission to carefully scrutinize this proposal to ensure that it would not be contrary to the overall goal of AM improvement.

12. *Comments in Response to the NAB Petition.* Sixteen parties filed comments and three parties filed replies in response to the NAB petition.[20] Responses to the NAB proposals take positions on both sides of the issues raised therein. Commenting broadcasters generally agree with NAB's position that the rules are being abused to competitively expand the service areas of primary stations. They urge the Commission to initiate a rule making looking toward clarification and tightening of the rules to align them with the original intended purposes of translator service.

13. Most of the commenting broadcasters support NAB's position that translators should be prohibited from importing distant signals within the 1 mV/m contours of full-service stations. Their main concern is for possible adverse effects of such translators on local radio market structure, competition, and news and public affairs programming, as well as the principles of localism. They assert that translators serving areas outside the 1 mV/m contours of their primary stations seriously threaten to undermine the economic viability of the local stations within whose service areas such translators are operating. The Tucson Broadcasters Association also points out that translators do not have local service obligations. It asserts that the intent of Section 307(b) of the Communications Act[21] is to provide for as many outlets as possible "for local self-expression" and, thus, the Act does not contemplate service within a community from stations located hundreds of miles away.

14. Commenting broadcasters also agree with NAB that primary stations should be prohibited from financially supporting any translator rebroadcasting their signals beyond their 1 mV/m contours. They generally argue that entrepreneurs seeking to establish translators to rebroadcast non-local stations are motivated by the potential to

profit from financial support by primary stations in excess of operation and maintenance costs, or the possibility of operating a low-power FM program origination radio service, which they anticipate the Commission will eventually authorize. In this regard, a few commenters describe the relationship of translators to local stations within their state or particular communities. Generally, the situations depicted support the commenters' concerns about the influx of translators within their stations' 1 mV/m service contours and the observations that entrepreneurs are establishing translator networks across large areas of their states.

15. Several commenters oppose changes that would tighten the FM translator rules. Among these are several translator operators who believe that NAB's proposals are "protectionist" and that translators do not pose an economic threat to full-service stations. They take the position that translators increase program diversity and provide radio service tailored to the needs of the listening public. In this regard, Double Eagle Broadcasting and La Tour favor permitting translators to rebroadcast AM stations and to engage in program origination. La Tour also believes that translator operators should be allowed to earn a return on their investments and should not be prohibited from making a profit.

16. Faith Communications Center (Faith), a public radio broadcaster, and Mars Hill Broadcasting Company, Inc. further argue that translators serving areas beyond their primary stations' 1 mV/m contours are needed to provide many communities with specialized program formats. In this regard, Faith opposes more stringent rules against the use of translators as relays on the ground that they would preclude service to isolated areas unable to support a full-service station. La Tour states that "daisy chaining" of translators as relays is not inefficient in that it only utilizes spectrum unable to accommodate full-service stations. He adds, however, that since such signals are subject to significant degradation, alternative means of input signal delivery, such as use of microwave facilities, should be permitted. Finally, CGC opposes NAB's proposal to allow FM translators to rebroadcast AM signals on the grounds it would further siphon listeners from the already fragmented AM band and draw attention away from correcting fundamental problems in AM service.

17. Commenting consulting engineers address NAB's concerns that translators may interfere with full-service stations. John J. Davis points out that NAB did not cite any specific instances of adverse effects from the use of directional antennas, and takes the position that the current practice of licensing translators based on proposed transmitter power and directional antenna use works well. Davis suggests incorporating the prohibited overlap standards for noncommercial educational stations in Section 73.509 of the rules into the translator rules. CGC, on the other hand, endorses minimum distance separation standards as the preferable solution to interference by translators. It states that such standards would provide simple "go/no-go" answers for application processing and be compatible with the short-spacing computer programs currently used for full- service FM stations. It also suggests establishing strict ERP and antenna height above average terrain (HAAT) limitations for translators that correspond to the various classes of primary FM stations. However, CGC observes that minimum distance standards likely would curtail the number of channels available for fill-in translator service, and recommends waiving these requirements where broadcasters enter into private short-spacing agreements.

18. CGC also suggests that in view of the recent rule changes in BC Docket No. 80-90[22] to allow full-service Class A stations to operate on all 80 commercial channels, translators should not be restricted to the twenty channels originally reserved for Class A use.[23] In addition, it states that significant improvements in fill-in service to deeply shadowed pocket areas could be made by permitting translators to use any available means of input signal delivery, including telephone lines, CATV systems, and microwave facilities.

19. *The AGK Communications, Inc. Petition.* AGK's petition addresses the prohibition in Section 74.1232(d) of the rules on commercial primary station ownership of translators outside their 1 mV/m contours and within the 1 mV/m contour of another FM station assigned to a different principal community. Specifically, AGK proposes that the Commission delete Section 74.1232(d) in its entirety.[24] If the Commission were to decide not to adopt its primary proposal, AGK proposes alternatively amending Section 74.1232(d) to provide commercial FM stations added flexibility to establish translators outside their 1 mV/m contours. For example, AGK states that FM stations could be permitted to operate translators anywhere within 100 miles of their community of license.

20. AGK argues that Section 74.1232(d) unfairly places FM licensees at a disadvantage vis-a-vis competition among broadcast stations serving the same Arbitron Metro Ratings area. In this regard, AGK states that the signal of its Station WAQX(FM) covers nearly 100 percent of the county in which Manlius, New York, is located, but only 15 percent of each of the other two counties that comprise its Metro Ratings area. It asserts that since Station WAQX(FM) is unable to serve a large portion of its ratings area, its audience share is diminished, its ranking among competing stations is lowered, and its ability to set competitive advertising rates is affected. AGK thus contends that its interests are adversely affected by Section 74.1232(d), and suggests that since this problem is encountered by FM stations throughout the country, its petition raises concerns of general applicability.

21. In support of its proposal, AGK states that the Commission's concern in prohibiting primary stations from operating translators outside their 1 mV/m contours has been the possibility that small market stations would be competitively disadvantaged if large market stations establish translators in smaller communities and attempt to sell advertising on the primary station to local merchants. It cites the Commission's statement in Docket No. 19918 that in most cases small market stations would not be competing for advertising with translators retransmitting signals from larger market stations because local merchants would have little interest in incurring higher costs for coverage outside their small town area that would not generate additional sales.[25] AGK, therefore, submits that the Commission has found it unnecessary to protect small market stations from translator operations by distant large city stations. It asserts that small market stations not only would remain unharmed if Section 74.1232(d) were deleted, but also would benefit by expanding their service areas through the operation of translators. AGK also states that since the rule applies only to FM licensees and the

public at large is already eligible for translator licensing, its deletion would not produce a flood of new applications.

22. *Comments in Response to the AGK Petition.* Comments in response to AGK's petition were filed by CBS Inc. (CBS), Cornell Radio Guild, Inc. (Cornell), and NAB. All three commenters oppose AGK's proposal on the grounds that it is contrary to the purposes of the FM translator service. In this regard, CBS states that the Commission's new allocation rules in Docket No. 80-90 will provide FM service to previously unserved areas and, therefore, expanded translator service to those areas is not needed.

23. NAB and Cornell discuss the possible effects of AGK's proposal on competition in local radio markets and on local service to the public. NAB asserts that this proposal would exacerbate the abusive unfair competitive practices detailed in its petition that it claims are having deleterious and dislocative effects in many local markets. It also states that in view of their secondary status, the proliferation of licensee-owned translators would be contrary to the public interest. NAB further contends that although translators are secondary facilities that by rule must cease operation if they conflict with a new full-service station, there are practical difficulties with forcing them off the air in such cases. Thus, it argues that the existence of a translator may deter a potential applicant from building a full-service station in a particular market, and that the existence of several translators in a market would magnify such deterrent effects.

24. Cornell asserts that the effect of AGK's proposal would be to allow FM licensees unlimited use of translators to extend their service areas and claims that such uses would disrupt the operation and delicate competitive balance of local radio markets by fractionalizing listening audiences. It states that intrusion by such stations into local FM markets could result in a net loss of local service to communities that would undermine the Commission's policies in furtherance of Section 307(b) of the Communications Act. Additionally, with respect to AGK's claim that Station WAQX(FM) is competitively disadvantaged by the inability to use translators outside its 1 mV/m contour, Cornell states that the Commission's concern for the financial success of individual broadcast stations should not go beyond ensuring that there is no loss of service to local communities.

25. Finally, the commenters argue that AGK's proposal would have an undesirable impact on FM licensees' ownership of broadcast facilities generally. Cornell argues that AGK's proposal would permit FM licensees to avoid the restrictions in the multiple ownership rules on the number of stations an individual licensee may own.[26] CBS contends that this proposal would undermine the duopoly provisions of the multiple ownership rules by permitting a licensee to serve a market where it has a full-service station with a translator that rebroadcasts another of its full-service stations that is located in a different market.[27]

26. *The John Davidson Craver Petition.* Craver requests that the Commission modify the rules to authorize unlimited local origination on FM translators.[28] He states that this would permit "narrowcasting" of diverse and unique programming targeted to smaller geographic areas that share common interests, and sometimes languages, which otherwise would not be commercially viable. He states that this service would be in the public interest and would constitute an efficient use of the FM broadcast band since translators fill in the gaps between full-service stations without creating objectionable interference. Finally, he states that because FM translators are less expensive to build and operate than full-service stations, his proposal would make participation in broadcasting possible for a larger segment of the public.

27. *The John S. La Tour Petition.* La Tour also requests that the FM translator rules be modified to permit unlimited program origination. La Tour further proposes that the Commission: 1) allow FM translator networking using satellite technology, 2) protect translators from interference by other services through channel-spacing requirements;[29] and, 3) permit operation of translators on all classes of FM channels with uniform ten watt power outputs. La Tour argues that communities are well served only when they have the proper mix of programming and services as determined by market forces, and states that expanded service authority for translators is a low cost avenue for program formats of narrow audience appeal that cannot be provided by full-service stations. According to La Tour, the reasons for the lack of variety in FM programming are largely economic, since full-service stations must attract the widest possible audience in order to maximize advertising revenues. He states that since translators cannot cover as wide a geographic area as full-service stations, they would have a strong economic incentive not to compete with existing services, but rather would originate programming tailored to meet the needs of their individual communities. In this regard, La Tour states that translators should be allowed to utilize satellite technology to develop networks capable of producing such narrow appeal program formats economically. In addition, he asserts that translators engaging in program origination should not be constrained by an arbitrary one-watt power output limit east of the Mississippi River, if spacing requirements can be met. He further argues that they should not be restricted to operation on the original Class A channels when use of any available channel would make more efficient use of the spectrum. La Tour also states that, since translators originating programming are the only facilities capable of providing narrow appeal formats without succumbing to the economic perils of the marketplace, they should not be classified as a secondary service, but instead should be protected from interference by other broadcast services. He states that such protection is needed in order to encourage interest and investment in an FM translator radio service.

28. *The Communications General Corporation Petition.* CGC requests that the Commission amend Section 74.1201(b)(1) of the rules to allow the operation of FM translators on any of the 80 channels (Channels 221-300 inclusive) of the commercial FM band. Petitioner states that the current restriction limiting FM translators to only 20 output channels, formerly reserved for Class A stations, is outdated and serves no useful purpose in light of the fact that Class A stations are now permitted to operate on any of the 80 channels of the commercial FM band. As a consulting engineering firm, CGC states that it has found that the current restriction often precludes the operation of FM translators, particularly in metropolitan areas, due to Class A channel crowding.

29. *The Bruce Quinn Petition.* In his petition, Quinn requests that the Commission permit low-power Class D stations, operating at ten watts or less, on frequencies between 92.1 and 107.9 Mhz (Channels 221-300) on the FM broadcast band. He points out that technical standards

and separations requirements already exist in the rules. Quinn submits that Class D facilities need not be allocated as long as the applicant can prove that the channel meets the spacing requirements. He also proposes that a Class D broadcaster be required to move to another frequency or shut down if a construction permit is later granted to any higher class station in the area that conflicts with its channel. Quinn states that implementation of his proposal would serve the public interest by making thousands of new channels available throughout the country. He submits that such stations would be inexpensive to build and operate and would provide greater opportunities for the public to participate in broadcasting. Quinn further contends that programming formats that are not suitable for high-power commercial or educational stations could survive on such Class D stations, and add to the diversity of voices available to the public.

30. *The Robert Jacoby Petition.* Jacoby proposes a new low-power Consumer Information Service (CIS) on the FM radio band that would be similar to the Travel Information Service on the AM band. As he proposes, these low-power stations would broadcast over a five-mile radius from shopping centers, malls, or similar commercial areas to advise potential shoppers of available products and merchandise. Jacoby also suggests that a portion of each hour could be devoted to public service and calendar-type messages. He states that CIS radio would be akin to the "Yellow Pages" and would aid consumers in learning of available choices on the way to locations where they shop. Jacoby states that such stations also would aid local merchants who cannot afford to advertise on full-power stations and would allow them to focus their advertising resources towards those consumers likely to be potential customers. He contends that this service is likely to increase the overall amount of advertising on broadcast facilities rather than simply draw advertising away from full-power commercial stations. Further, he asserts that CIS would aid local merchants who must compete increasingly with home shopping services. Jacoby proposes that such stations be authorized on a case-by-case basis where they would not cause interference to existing stations.

DISCUSSION

31. It is apparent from the petitions for rule making that there is considerable concern about the adverse impact upon full-service FM stations of FM translator use under the current rules, as well as interest in new and expanded uses of FM translators. We are aware of the concerns expressed by NAB and its supporters that translators may have an adverse competitive and technical impact on the service provided by full-service FM stations and the possible need to strengthen the existing limitations on translator operation. We also note that other petitions to increase use of FM translator facilities to provide new service to underserved areas and to serve the interests of specialized audiences may be generally consistent with our goal of maximizing the number and diversity of mass media outlets. In view of the concerns and interests expressed by parties on both sides of this matter, we believe it is appropriate to initiate a broad reexamination of our FM translator policies.

32. We want to emphasize at the outset of this proceeding that we have not changed our longstanding view that the proper role of FM translators is to provide supplementary service to unserved and underserved areas, and to areas unable to receive satisfactory reception within the normal predicted service areas of primary FM stations.[30] Full-service stations operate at power levels significantly higher than those permissible for translators and, therefore, they provide coverage to geographic areas much larger than those translators are capable of serving. Our experience with low-power stations like translators indicates that substantial spectrum inefficiencies may result from their operation on a primary basis. For example, in the 1978 *Report and Order* in Docket No. 20735, the Commission terminated the acceptance of applications for low-power Class D noncommercial stations and required existing Class D stations either to upgrade their facilities or move to nonreserved commercial channels.[31] In taking that action, the Commission found that the large number of limited-range Class D stations then operating were impeding licensing of more efficient Class B and C stations. The Commission also observed that full-service stations make more efficient use of the spectrum than translators in that the ratio of coverage to interference area is much larger for full-service stations than for low-power translators. In view of our commitment to authorize primary service in the most spectrally efficient manner, we believe it is necessary and appropriate to preserve the existing relationships in our FM allocations scheme and, thus, to maintain full-service stations and translators in their current roles as providers of primary and secondary service, respectively. Consistent with this position, we do not contemplate the creation, as the La Tour petition appears to suggest, of a new class of low-power FM stations equal in standing to full- service facilities[32] and will carefully examine all policy options in this area in terms of their effect on our overall FM allocations plan.

33. We invite interested parties to comment on the appropriate regulatory structure for the authorization of FM translator station operations, including, but not limited to, the issues and service applications indicated in the various petitions. We particularly request that commenters consider the possible adverse effects, as argued by the NAB and its supporters, of translators authorized under the current rules. We also invite the submission of any other information that may be relevant to a broad reevaluation of our FM translator regulatory scheme. In addition, we seek comment and proposals concerning the need for revision to the FM translator rules to prevent their abuse, including real party-in-interest and interference protection standards, that are more specific than those currently in place under the existing FM translator rules. Further, commenters are asked to consider ways in which FM translators can be used to provide better service to underserved areas. Commenters are asked to be specific in stating proposals and presenting arguments and evidence concerning the benefits or adverse effects of any modifications to FM translator authority, especially with respect to expanded FM translator service, as general claims and allegations are of less value in deciding the issues addressed herein.

The Impact of Translators on Full - service Stations

34. *Translator Service Issues.* The NAB and others argue that translators are being used to introduce unfair competition into radio markets that are well-served by full-service stations. They argue that some translators now are being used to import the signals of large, major market stations into medium or small markets that might not be able to support another full-service station. NAB observes

that the costs of building and operating a translator appear to be minimal relative to those of a full- service station and that translators do not now have the same program service obligations as full-service stations. While these obligations have been made less burdensome by our action in the *Radio Deregulation* proceeding,[33] full- service stations remain subject to requirements for studio origination capability and issue-responsive programming and, as a result, have a higher cost structure. We seek comment on whether these operational cost advantages unfairly advantage a translator vis-a-vis the existing full-service stations, and to what extent translators serving a relatively small area could limit the entry of new full-service stations or impact the service of existing stations.

35. We request comment on whether and under what market conditions translators might cause harm to program services provided to the public by those full-service stations. In this regard, commenters should consider whether the existing regulatory scheme for FM translators, or an alternative providing more stringent regulation, would best serve to ensure the availability of the optimal amount of quality radio service to the public. We seek information regarding the extent to which translators licensed under the current rules may be operating beyond their intended role as providers of fill-in and supplemental service.

36. Under current practice the need for a translator station is presumed upon the filing of the application. The burden is on an objector to make a *prima facie* showing of lack of need. Only if this *prima facie* showing of lack of need is made, or if an applicant is seeking more than one FM translator to rebroadcast the same primary station, must the applicant document a need for the proposed new FM translator station. Numerous parties filing petitions to deny and petitions for reconsideration of staff actions granting FM translator applications suggest that the burden of proof should be shifted to the FM translator applicant to establish the need for the new service. These same parties also question whether there are clear criteria for establishing a lack of need. They point out that since the mere listing of the number of existing stations, regardless of their number or format, is insufficient to establish lack of need, some other guidelines must be provided. They suggest that the Commission consider whether the translator is to be located in a major city or in a small isolated community, whether the proposed area of service is already being served by an abundance of existing radio stations, and whether the primary station's signal originated in a distant city. We seek comment on whether the burden should be shifted to the FM translator applicant to establish a need for the new service. We also seek comment on the criteria that should be used to show that there is a need for such new service. Furthermore, we seek comment on the criteria that an objector must show to establish a *prima facie* lack of need under the current policy.

37. In studying the impact of translators on full-service stations, commenters are asked to address the extent to which translators have advantages compared to the full-service stations with which they might compete for audience. On the one hand, as a number of parties have pointed out, translators typically cost much less to build and operate than full-service stations. In particular, since translators only operate with an output of 1 or 10 watts, they use much smaller and lower-power transmitters than stations in any of the classes of full-service FM stations. Hence, the costs of the transmitter and electricity to operate the transmitter are far lower than for a full-service station. Translator equipment also requires little maintenance and occupies only a small space, further reducing operating costs. Another major translator cost advantage is that, to the extent that translators simply relay programs of their primary station, the primary station, rather than the translator, bears the direct costs of those programs. Translator licensees also save in that they do not have to maintain studio facilities for program origination. On the other hand, as a result of the restrictions on power output of translators, the signal of a basic translator employing a single 10 watt radio frequency amplifier and a simple antenna covers a much smaller area than does a full-service station.[34] Hence the potential audience and thus the possible revenue that can be obtained by such a translator is far smaller than that of a full-service station.

38. We seek comment on the need to modify the restrictions on ownership and support by a primary station of a translator operating within the service area of another full-service station. Under existing rules, as discussed above, if a commercial translator places a signal outside the predicted 1 mV/m contour of the originating FM station, that translator may only be operated by the full-service station if it is not located within the predicted 1 mV/m contour of another full-service commercial station assigned to a different principal community. Full-service station licensees also are prohibited from providing support to other persons or organizations that wish to construct a translator outside the 1 mV/m contour of the station, and within the 1 mV/m contour of another full-service station assigned to a different principal community, prior to the commencement of operation of the translator. Hence, current rules generally allow full-service FM stations to own and operate translators in rural areas where no other commercial FM service is available. On the other hand, individuals or community organizations may, on their own, construct translators that bring in distant signals within the 1 mV/m contour of another commercial FM station. The Commission placed these restrictions on translators owned or operated by full-service stations in order to prevent those stations from expanding their area of coverage to areas where the translator might adversely affect other full-service stations.[35] The Commission was particularly concerned about the adverse impact of translators on small, marginally profitable stations located in small markets or in rural areas.

39. We seek information on NAB's proposal to prohibit *any* use of translators that would have the effect of extending a primary station's signal into the coverage area of another commercial full-service station. We also request information on the extent to which stations operating under the current less restrictive approach might be providing needed service. We are aware of NAB's concern that many translators are being used solely as relay stations to allow a primary station to provide translator service in a distant community. We seek information on the extent to which translators are being used solely to relay signals to another translator in a distant community served by one or more full-service stations. We also invite comment on NAB's proposal in this regard that we adopt community standards and minimum signal strength requirements for community coverage to ensure that translators serve populated areas.

40. The 1 mV/m criteria of the translator rules apply to all classes of commercial full-service FM stations. However, other provisions of our rules recognize that the predicted service areas of Class B and Class B1 stations extend to their 0.5 and 0.7 predicted contours, respectively.[36] Among the options available to the Commission would be to remove the 1 mV/m contour restriction entirely, or to modify the restriction to use a 0.5 or a 0.7 mV/m contour to define both the area in which a primary station may build a translator and/or the area in which it is forbidden to build a translator. We request comment on whether the 1 mV/m rule or a revised version of this rule, should be made consistent with the predicted service contours of Class B and B1 stations.

41. The limitations in the current rules on translator support by primary station licensees and locally originated messages to obtain contributions and advertiser support were designed to limit exploitation of translators for economic purposes. According to the NAB and the statements of numerous parties filing petitions to deny applications for new translator stations, translator operators are devising schemes to subvert the spirit of these rules that make it possible to operate translators as profit-making ventures. We request information about the nature of translator profit- making schemes, such as the lease back approach mentioned by NAB, the extent to which they are used in translator operations, and the extent to which the translators operated thereby adversely affect the operation of full-service FM stations. In conjunction with this issue, we seek comment on the NAB's proposal that we adopt rules that: 1) specifically prohibit profit making with FM translators; 2) only allow community-sponsored translators to originate messages regarding contributions towards station operation and maintenance; and, 3) prohibit primary stations from financially supporting any translators other than those providing fill-in service within their 1 mV/m contours.

42. An important issue we wish to examine is how to decide among mutually exclusive applications. This is an issue that has arisen recently in the context of the current FM translator rules. We believe it would not be cost effective to employ the comparative hearing process now used for full- service TV, AM, and FM radio applications to resolve conflicts between translators. In order to keep application filing and processing costs low, we believe it would be more appropriate to use an alternate approach such as a lottery of the form authorized by Section 309(i) of the Communications Act.[37] The lottery is currently used for one other mass media service – LPTV.[38] Comments and information are solicited on possible approaches for resolving mutually exclusive FM translator applications.

43. *Technical standards.* We recognize that there is concern on the part of many FM broadcasters that the current rule that prohibits FM translators from causing interference to full-service stations may be inadequate.[39] The NAB and its supporters argue that translator stations are causing interference to full-service stations. Our own records indicate that between 15 and 20 complaints of interference to FM stations by translators have been received in each of the last several years. It is not practical to establish general interference standards that would *absolutely* ensure before they begin operation that translators would not cause interference to full-service stations. Such standards would preclude many translators that would not cause interference to full-service stations. However, standards more stringent than those currently in place that would provide additional protection without unduly restricting translator operations could be adopted, if they were warranted. We request comment on whether the number of complaints of translator interference to full-service stations poses problems for full-service stations to an extent that more stringent protection is necessary in order to *a priori* guard against such problems. In light of the interference concerns raised by NAB, we believe it is desirable to consider alternative interference standards for such stations. We request comment on the need for alternative technical standards, including the possibility of adopting more stringent standards.

44. One alternative approach for improved interference protection would be to adopt distance separation standards for FM translators and co- channel and/or adjacent channel translators and full-service stations comparable to those specified for minimum distances between full-service stations.[40] Another means of interference protection would be to codify prohibited overlap of signal strength contours similar to those that apply to noncommercial educational FM stations.[41] We seek comment on the extent to which either of these approaches would provide a workable solution for the potential problem of interference involving translator stations. We further request comment on the need to restrict the effective radiated power (ERP) of translators and/or height above average terrain (HAAT) and to impose more precise standards for use of directional antennas by such stations to prevent interference. Interested parties are requested to comment on the effects of more stringent interference standards on the availability of FM translator channels and the cost of establishing stations.

45. The question of interference standards also is associated with the more general technical issue of the quality of the signal provided to consumers as limited by the level of interference among FM stations. The Commission designed FM radio as a service with low interference and noise levels from its inception.[42] Among other things, the Commission authorized FM stations to use a much wider bandwidth than AM stations and designed a table of allotments for FM stations. Moreover, the technical characteristics of FM transmission and reception make FM less susceptible than AM to noise and interference from weaker co-channel and adjacent channel FM stations. Nevertheless, it is possible that the operation of several FM translators in a given area might raise the level of interference to a point at which the quality of FM sound received might be significantly degraded.

46. We request comments on the extent to which translator operations might raise the overall level of interference and background noise on the FM band. We request information on the extent, if any, to which the interference level might rise and a substantially increased fraction of the public might experience noise or interference in attempting to receive FM signals. We also request comment and proposals on ways to minimize the increased level of interference. In particular, we ask whether it would be necessary or desirable to develop equipment performance standards for translators in order to reduce the potential interference level. A related issue is whether translators should have any rights of protection against other translators. Because we have concluded that translators will continue to retain their secondary status, we do not propose to protect them against any full-service stations.

47. Whatever technical interference standards we may adopt, there may be situations where translator-to-translator interference occurs. In spite of the fact that technical standards can, in principle, be designed to provide adequate interference protection, in reality they sometimes do not do so because of unique circumstances in a particular location. Thus, it may be appropriate to consider establishing a policy for handling interference situations that may arise where stations are otherwise in conformance with the technical rules. In this regard, we ask commenters to address whether it would be appropriate to adopt a policy whereby, if translator stations meet our technical allocation standards, a certain degree of interference that occurs as a result of the operation of those stations must be accepted. In addition, should we determine that it is necessary to resolve problems of interference between translators, we seek comment and proposals regarding the appropriate interference standards. We emphasize that such provisions would apply *only* to interference from a translator to a translator or a translator to another secondary service, and not to interference by translators to full-service stations or vice versa.

48. We also are concerned that some noncommercial FM translators operating on the reserved channels serving areas beyond the Grade B contour of a television station operating on TV channel six may be causing interference to the reception of channel six stations. In the past, we have found that the requirement of Section 74.1203(a) of our rules that FM translators not cause interference "to the direct reception by the public of the off-the-air signal of any authorized broadcast station" sufficient to protect against undue interference in such cases.[43] We ask for comment on whether we should adopt further restrictions on noncommercial FM translator stations operating on frequencies near TV channel six in areas where there are TV channel six stations or assignments.

Expansions of the FM Translator Authority

49. Our primary objective in this proceeding is to consider regulatory changes that will both promote translator use for fill-in and rural service and prevent translator operations from inappropriately affecting full- service stations. On the other side of this matter, however, several parties have submitted proposals for expanding the authority for operation and use of FM translators. There are important considerations that lead us to proceed with caution in contemplating expansions of the basic service authorization. First, there are the concerns expressed by NAB that expanded operation of FM translators could impact full-service FM stations, as discussed above. In addition, the licensing of large numbers of FM translator stations could impose undue burdens on the Commission's resources, and thus might cause delays in the initiation of new translator service to the public in areas unserved or underserved by full-service stations. Also, widespread operation of FM translator stations could pose significant and difficult new monitoring and enforcement requirements for the Commission. For all these reasons, we tentatively conclude that translator operations should not be altered substantially. Nevertheless, some types of expanded use of such stations may offer benefits to the public in underserved areas. Therefore, in the interest of developing a full record in this area, we invite commenters to address the proposals advanced in the various petitions.

50. Our discussion herein of possible expansions of the translator rules generally addresses the types of changes proposed by the petitioning parties. However, we do not intend to limit the scope of this inquiry to only those issues. Parties interested in this matter are invited to submit comment, information, and proposals regarding any aspect of FM translators and our rules and policies with respect thereto. We ask that commenting parties pay careful attention to the full implications of specific proposals for expansions of service.

51. We invite comment on the advisability of eliminating or relaxing the prohibition in Section 74.1232(d) of the rules on ownership or support of translators by primary stations outside their 1 m/Vm contours. Interested parties are asked to comment on the extent to which the ability to reach nearby areas outside a primary station's service area but within the service area of other full-service stations might benefit radio listeners. We also seek comment on the potential adverse effects of such a rule change, as discussed by parties opposing AGK's request. We are particularly interested in discussion of why the audience survey problem discussed by AGK should be remedied through regulation as opposed to negotiations between the private parties involved. From a more general standpoint, we seek comment on the public interest benefits to be derived from permitting FM translators to import popular programming, with corresponding high audience appeal, from a full-power station in another market.

52. We also invite comment on authorizing increased program origination by FM translators as proposed by Craver, La Tour, Quinn, and Jacoby. We observe that to permit unlimited program origination has the potential to make available more channels of radio programming in less rural areas of the country. In these areas, program origination authority may result in programming tailored to small audiences with specialized tastes rather than to a least common denominator mass audience. We seek comments on the value, need, and desirability of expanding the FM translator authority to permit increased program origination. Since the expected location of such translators would affect listeners' options as well as competing full-service stations, we request comments on the expected location of such new translators. We also request information regarding the extent to which the service provided by full-power FM stations may not meet the public's needs or wants and how expanded translator program origination might further the public interest in this regard.

53. As indicated above, the permissible output power of FM translators is limited under our existing rules to either one or ten watts depending on the location of the station.[44] We ask commenters to address the issue of whether it might be desirable for the authorized power of FM translators to be uniform throughout the country. Interested parties are requested to comment on the desirability and effects of increasing the authorized power for FM translators to 10 watts nationwide. We are particularly interested in information on the extent to which translators operating at higher power might cause increased interference to full-service stations located east of the Mississippi River and in Zone I-A.

54. Commenters also are invited to examine the need for the current rule prohibiting FM translators operating on non-reserved channels (channels 221-300) from rebroadcasting signals that are not received directly over-the-air from their primary station. This rule was designed as part of the Commission's traditional plan for limiting

the economic impact of translators on full-service stations. In a separate action today, we are eliminating the over-the-air signal delivery requirement for noncommercial educational translators that operate on reserved channels and that are owned and operated by their noncommercial educational parent station.[45] In that action, we are allowing those noncommercial translators to rebroadcast distant signals delivered by any technical method, including microwave and satellite facilities. Permitting translators that operate on non-reserved channels this flexibility would allow them the option of trading off higher technical quality of the received signal against the cost of the technology used to bring in the signal. Moreover, our current rules that essentially limit commercial FM translator reception to the line-of-sight of their primary station may have the unintended effect of restricting the use of translators in some mountainous areas where a full-power station might wish to locate a fill-in translator relatively close to the station, but is precluded from delivering its signal to that translator by terrain features. If there is, in fact, a public policy reason to continue to restrict the distance over which a commercial translator may pick up a distant signal, we question whether it may be preferable to define a maximum distance from which the signal may be received, but not restrict the technology used to bring the signal to the translator itself. We request comments on our rule restricting the technology used to deliver signals to translator stations and whether it is desirable to retain, relax or eliminate this rule.[46]

55. We also seek comment on whether, if we were to allow the use of alternate signal delivery to commercial translators, it would be desirable to authorize use of broadcast auxiliary facilities to deliver program signals to commercial FM translators.[47] We recognize that these frequencies already are congested in many areas, particularly the larger markets, and that use of intercity relays to relay signals to translators could affect the availability of channel space for broadcast auxiliary stations intended to serve primary stations. However, it is also likely that broadcast auxiliary channels may be unused in the more remote areas typically served by translators. The use of broadcast auxiliary frequencies with commercial translators may be acceptable so long as that use was on a secondary basis and frequency use is coordinated with local frequency coordinating committees. A secondary authorization would provide that broadcast auxiliary channels could be used to deliver signals to translators where such use would not interfere with use of those channels to serve full- service stations.

56. We also intend to consider the possibility of permitting FM translators to be used to rebroadcast the signals of AM stations. Initially, we note that the Commission has dismissed similar proposals in the past. In those decisions the Commission generally noted that there are distinct technical differences between the AM and FM services that argue against simply extending the current FM translator authorization to include the rebroadcasting of AM signals.[48]

57. One of these differences concerns the marked propagation differences between signals in the AM and FM bands. Unlike the signals of FM stations, which are propagated essentially along line-of-sight paths, the primary groundwave signals of AM broadcast stations propagate along the surface of the earth. For this reason the line-of-sight distance between a transmitter and receiving antenna does not have the same importance for an AM station as it does for an FM station. Thus, terrain obstructions do not limit reception of signals in the AM band in the same manner as they do signals in the FM band. Consequently, non-directional AM stations in areas with uneven terrain generally do not need the fill-in service provided by translators to reach listeners within their predicted contours. However, we recognize that many AM stations employ directional antennas, some of which have large null areas. We request comments regarding the possible benefits of the use of FM translators to provide fill-in service in such cases. Comments concerning this option also should consider the drawbacks of allowing cross-service authorizations, which would effectively serve to attract the audiences to the FM band.

58. Another difference noted by the Commission was the propagation difference that occurs in the AM band during nighttime hours. At night, transmitted signals in the AM band are in effect reflected from the ionosphere and are able to cause interference to other AM stations over great distances. Because it is limited by interference, the distance over which the primary signal of an AM station can be received during nighttime is considerably less than that during the daytime. Thus, direct off-the-air rebroadcast of an AM station by an FM translator at night would not likely be feasible in instances where the translator would be located at distances near the maximum daytime range of the AM station.

59. The use of FM translators by AM stations theoretically could resolve problems of nighttime reductions in service area many AM stations experience, particularly if the translators were permitted to be fed by signal delivery methods other than over-the-air delivery. However, we also note the concern expressed by the NAB's Board of Directors that use of FM translators to deliver AM programming could have adverse effects on the AM service. We seek comment on the issues discussed above and on the potential public interest benefits of permitting FM translator stations to rebroadcast the signals of AM stations.

60. Finally, commenters are invited to consider CGC's proposal to eliminate the current rule restricting FM translators to the 20 channels formerly authorized for Class A stations. We request comment on this proposal, which would allow translators to use all 80 commercial FM channels. We observe that our rules could be amended to permit the operation of translators on all 80 channels, whether or not we determine that the appropriate function of translator service should be expanded beyond its traditional role. We also request comment on La Tour's proposal to allocate translator stations in the same manner as we now do for full- service stations, albeit on a secondary basis, and whether such an approach would be practicable and would lead to efficient results.

61. Any action we might ultimately take to permit expanded FM translator operations could be expected to have an impact on Commission resources and our administrative procedures. This impact would be in the form of additional license processing and enforcement activity. Parties submitting specific proposals should consider the administrative costs of their plans and the possible effects on other programs within the Commission. Naturally, some policy alternatives would be easier to implement and require fewer administrative resources. Commenting parties should weigh implementation considerations and administrative costs against the merits of specific proposals.

Interim Treatment of Applications

62. Finally, we turn to procedural matters regarding the processing of FM translator applications during the pendency of this proceeding. Notwithstanding our disinclination to change the role of translators substantially, we are concerned that the volume of applications for FM translators could increase with the release of this Notice in anticipation that we might eventually permit these stations to readily convert from a rebroadcast service to stations authorized to originate programming. In order to avoid such an increase in requests for new FM translators or major changes to existing FM translator stations, which could overburden our processing resources and also could conflict with any policy changes we might make pursuant to the issues and proposals addressed herein, we are implementing a general "freeze" on the acceptance of applications for new FM translator stations or major changes to existing stations or permits pending our final action in this proceeding. We recognize that there are FM translator applications on file now awaiting action. We will continue to process and consider for grant any such application received by the Commission prior to the adoption of this Notice. Generally, we will not accept applications for new FM translators or major changes to existing stations or permits, either commercial or noncommercial, for assignment to the commercial FM band under this freeze. However, we will provide an exception to the general freeze on translator applications for new noncommercial, educational FM translators seeking assignment to the reserved frequency band (channels 200-220). This will permit the implementation of the noncommercial signal delivery technology rule change we are making todayin the *Report and Order* in MM Docket No. 86-112.[49] We also will permit the filing of applications for stations that would be mutually exclusive with an application that is exempt from the freeze. In such cases, the competing application will also be exempt from the freeze. Existing applications on file and newly filed applications exempted from the freeze generally will be processed in accordance with the current procedures. However, any application currently pending or filed under one of the exceptions to the general freeze, against which a petition to deny is filed in accordance with Section 309(d)(1) of the Communications Act, raising issues regarding for- profit operation or unequal competition will be held pending resolution of this proceeding.[50]

PROCEDURAL MATTERS

63. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before August 15, 1988, and reply comments on or before September 15, 1988. We wish to emphasize that, because of our desire to move quickly toward a rule making, we will be disinclined to grant extensions of time for filing comments and reply comments at this stage of the proceeding. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington D.C. 20554.

64. This Notice of Inquiry is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

65. In addition, IT IS ORDERED that the petition for waiver of Section 74.1231 of these rules for translator station K285CS filed by John Davidson Craver IS DENIED and that the petition for rule making of John S. La Tour IS DENIED to the extent indicated herein. Further, IT IS ORDERED that effectively immediately as of the close of Commission business on the day of adoption of this Notice of Inquiry, and until further notice, the Commission WILL NOT ACCEPT applications for new FM translator stations, except as provided herein above. Any translator application received by the Commission that is not acceptable due to this freeze will be returned, along with any accompanying filing fee, to the applicant.

66. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX

National Association of Broadcasters Petition (RM-5416)

Comments
Multimedia, Inc.
London Bridge Broadcasting, Inc.
Tucson Broadcasters Association
CBS Inc.
Communications General Corporation
KPSI Radio Corp.
King Broadcasting Company, Inc.
The Greenwich Broadcasting Corporation
John J. Davis
Arizona Broadcasters Association
The Henry Radio Company of California
Double Eagle Broadcasting
Faith Communications Corp.
Mars Hill Broadcasting Company, Inc.
William Paxton Rogers
John S. La Tour d/b/a J & J Broadcasting

Reply Comments
Communications General Corporation
SBI, Inc. and Flint Chicago Associates
National Association of Broadcasters

AGK Communications, Inc. Petition (RM-5472)

Comments
CBS Inc.
Cornell Radio Guild, Inc.
National Association of Broadcasters

FOOTNOTES

[1] *See Notice of Proposed Rule Making* in Docket No. 17159, 34 FR 761 (1969) and *Report and Order* in Docket No. 17159, 20 RR 2d 1538, 1540 (1970).

[2] Currently, there are 1,552 FM translators on-the-air and we have granted construction permits for another 457 translators. The current rules also recognize FM booster stations that are essentially co-channel FM translators operated within the predicted service contour of their primary station. Booster stations are authorized only to the licensee of the full-service station they rebroadcast. The Commission recently revised its FM booster rules to permit higher-power FM boosters and to permit them to rebroadcast signals received by any distribution technology the licensee deems suitable. *See Report and Order* in MM Docket No. 87-13, 2 FCC Rcd 4625 (1987). We will not address FM boosters in this Notice.

[3] The FM translator rules are set forth at 47 CFR §§74.1201-74.1284.

[4] The reservation of specific channels for Class A use by full-service FM stations was eliminated in the *First Report and Order* in MM Docket No. 86-144, 52 FR 8259 (1986). This action did not alter the restriction that commercial FM translators only are authorized to operate on those channels originally reserved for Class A use.

[5] 47 CFR §74.1235(a). Translators located east of the Mississippi River or within Zone I-A are limited to 1 watt power output, while translators throughout the remainder of the country may utilize 10 watts power output. As a rough approximation, 1 and 10 watt translators using omnidirectional antennas at a height of 100 feet can provide usable service to areas with radii of 8 kilometers and 16 kilometers, respectively. However, most existing translators employ directional antennas and are located on higher ground and thus serve larger geographic areas. Translators with 1 and 10 watts power output that operate in this manner typically, depending on their particular situations, can serve areas of 16 and 32 kilometers, respectively, from the transmitter site.

[6] 47 CFR §74.1203(a).

[7] In a separate action today, we are authorizing noncommercial educational FM station licensees to feed their owned and operated FM translators operating on reserved FM channels by any distribution technology the licensee deems suitable. *See Report and Order* in MM Docket No. 86-112, adopted March 24, 1988, FCC 88-125. Therein, we concluded that such changes in permissible input signal delivery to noncommercial translators would not be inconsistent with the supplemental and secondary role of FM translators and our overall FM allocations plan.

[8] A "primary station" is the full-service FM station retransmitted by a translator.

[9] Section 74.1231(g) of the rules provides that originations concerning emergency warnings of imminent danger are permitted provided they are no longer or more frequent than necessary to protect life and property.

[10] In 1974, in response to a petition for rule making filed by the NAB, the Commission considered tightening the translator rules to prohibit those translators which are not owned by the licensee of the primary station from operating within the 1 mV/m contour of a full-service station. *See Notice of Proposed Rule Making* in Docket No. 19918, 44 FCC 2d 794 (1974). In proposing this rule change, the Commission indicated that it appeared that translators were being used for purposes other than to provide fill-in service or service to underserved areas. The Commission observed that the economics of FM radio permit the operation of full-service stations in many small communities, but that in such communities, the economic status of those stations is often marginal. Consequently, the Commission was concerned that where FM translators rebroadcast the programming of distant FM stations in small communities that are served by full-service FM stations, the translators could pose a threat to the viability of the local FM stations by fragmenting the limited audiences. *Id.* The Commission did not adopt its proposed increased restriction on translator use at that time, however, stating that the record did not indicate that the existing limitations on the operation or control of FM translators were inadequate. *See Memorandum Opinion and Order* in Docket No. 19918, 98 FCC 2d 35, 44 (1984). The Commission did, however, issue a *Guide to FM Translator Rules and Policies* at that time to emphasize the need for translator licensees and applicants to conform with the existing FM translator rules. *See* Public Notice, 55 RR 2d 1247 (1984).

[11] *See* 47 CFR §74.1232(d).

[12] AGK is the licensee of Station WAQX(FM), Manlius, New York.

[13] Craver is the licensee of FM Translator Station K285CS, North Houston/Spring, Texas.

[14] La Tour is the licensee of a number of FM translators.

[15] CGC is a consulting engineering firm.

[16] Robert Jacoby is an entrepreneur interested in providing a new type of service with FM translators.

[17] Sections 1.401 and 1.403 of the Commission's rules require that petitions for rule making either be dismissed or placed on Public Notice for public comment. However, the comments received in response to the Public Notices issued following the NAB and AGK submissions convince us that it is appropriate to initiate a proceeding to reexamine FM translator matters. Because we have concluded that an inquiry is the appropriate manner in which to proceed in this matter, we find that compliance with these proceedures for the remaining petitions would serve only to prolong the course of this proceeding. Accordingly, we are dispensing with the Public Notice and comment cycle respect to the five remaining petitions and proceeding directly to the issuance of this Notice of Inquiry.

[18] In this regard, NAB specifically describes three methods of translator "daisy chaining" that it contends are possible under the current rules. These are: 1) the establishment of translators in areas devoid of population for use as relays; 2) the establishment of translators well beyond the community specified to be served for use as relays; and, 3) leaseback and advertising arrangements between independent translator licensees and primary stations.

[19] *See* 47 CFR §§74.1203(a) and (b).

[20] A list of the parties filing comments and replies to the NAB petition is provided in the Appendix.

[21] *See* 47 U.S.C. §307(b).

[22] *See Report and Order* in BC Docket No. 80-90, 48 FR 29486 (1983).

[23] This suggestion is essentially the same as the proposal submitted by CGC in its own petition, as described *infra* at para. 28.

[24] AGK notes that if this rule is deleted, then Section 74.1232(h) also should be deleted. Section 74.1232(h) provides that an authorization for a translator issued to an applicant described in subpart (d) is subject to the condition that it may be

terminated where the circumstances in the area served are so altered as to have prohibited grant of the application had such circumstances existed at the time the application was filed.

[25] *See Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in Docket No. 19918, FCC 78-226 (released March 31, 1978).

[26] *See* 47 CFR §73.3555(d). Translators are not counted for purposes of the multiple ownership rules.

[27] *See* 47 CFR §73.3555(a).

[28] On October 30, 1987, Craver filed a request for a waiver of Section 74.1231 of the rules to allow his FM translator K285CS, North Houston/Spring, Texas, to exceed the 30 second per hour limit on program origination. He indicates that this waiver would allow K285CS to provide unique programming which is not otherwise available to listeners in its service area. Because translator program origination is an issue to be addressed in this proceeding and because we do not wish to prejudice our final determination thereon, we find it would be not appropriate to grant Craver's waiver request. Accordingly, we are denying Craver's request for waiver of Section 74.1321 of the rules.

[29] La Tour suggests that the current standards provided in Section 73.504 of our rules to protect Mexican Class D FM stations be used as a guideline for developing translator separation distances for domestic purposes. *See* 47 CFR §73.504.

[30] In this regard, our commitment to maximize the availability of FM service to the public through full-service stations has never wavered. This is perhaps best exemplified by the rule changes to increase the availability of full-service FM stations adopted in Docket No. 80-90. *See Report and Order* in Docket No. 80-90, *supra* note 22. The facilities that are being authorized pursuant to Docket No. 84-231 will provide primary FM service to many unserved and underserved areas and populations that otherwise could have received only those signals rebroadcast by translators. *See First Report and Order* in Docket No. 84-231, 100 FCC 2d 1332 (1985).

[31] *See Report and Order* in Docket No. 20735, 43 FR 39704 (1978). The Commission similarly maintained a secondary spectrum priority for the low- power television service. *See Report and Order* in BC Docket No. 78-253, 51 RR 2d 476 (1982). Our commitment to maximizing service to the public with the highest regard for efficient spectrum use and management also is demonstrated by our action in Docket No. 80-90, where we decreased the FM station minimum distance separations to increase the number of channel classes and FM allotments without risking co-channel or adjacent channel interference. *See Report and Order* in Docket No. 80-90, *supra* note 22.

[32] Accordingly, we are denying La Tour's petition to the extent that it proposes the authorization of translator operations on an equivalent basis with full-service stations.

[33] *See Report and Order* in BC Docket 79-219, Deregulation of Radio, 84 FCC 2d 968, 981 (1981).

[34] The coverage difference between translators and full-service stations may be less than one might imagine, however. Because we only limit transmitter output power, not effective radiated power, and do not restrict antenna height, translator coverage can be substantial. This is especially true in some mountainous western states. We also have encountered an increasing number of situations where applicants, through use of power splitters, multiple output amplifiers, and directional antenna arrays that are stacked and oriented to serve multiple communities or areas, can achieve a vastly enlarged service area, with primary coverage approaching that of some full-service stations.

[35] *See Report and Order* in Docket No. 17159, *supra* note 1, at para. 6.

[36] The minimum separation distances for FM stations provided in Section 73.209 of the rules reflect protection to the 0.5 and 0.7 mV/m contours for Class B and B1 stations, respectively. *See Report and Order* in BC Docket No. 80-90, *supra* note 22. In addition, our recent action authorizing high-power FM booster stations permits such stations to provide service to the 0.5 and 0.7 contours of Class B and B1 stations. *See Report and Order* in MM Docket No. 87-13, *supra* note 2.

[37] 47 U.S.C. §309(i). *See also, Selection From Among Certain Competing Applications Using Random Section or Lotteries Instead of Comparative Hearings*, 48 FR 27182 (1983).

[38] *See* H.R. Rep. No. 765, 97th Cong., 2nd Sess. (1982).

[39] Although Section 74.1203(b) states that "[i]nterference will be considered to occur whenever reception of a regularly used off-the-air signal by viewers or listeners is impaired by the signals radiated by the translator, regardless of the quality of such reception," the rules do not prescribe a specific method for calculating interference among first, second, and third adjacent channel users. In practice, because FM translators, like noncommercial educational full-service FM stations, are allocated based on a showing that a proposed facility will not cause interference to any station, the staff uses specific contour computations (F(50,50) and F(50,10) curves), and ratios of undesired to desired signal strengths prescribed in Section 73.509 of the rules to estimate the potential for interference by FM translators. *See* 47 CFR §73.509.

[40] Section 73.207 sets forth the minimum separations standards between classes of FM stations. See 47 CFR §73.207.

[41] See supra note 39.

[42] See Report on Frequency Modulation in Docket No. 5805, 39 FCC 29 (1940).

[43] See 47 CFR §74.1203(a). See also Memorandum Opinion and Order in Docket No. 20735, 50 FR 27954, at note 6 (1985).

[44] Section 74.1235(a) of the rules set forth the power limitations for FM translators. See 47 CFR §73.1235(a).

[45] See Report and Order in MM Docket No. 86-112, supra note 7. We also are adopting today a Further Notice of Proposed Rule Making in that proceeding to consider extending the authority to use alternate signal delivery technology to all noncommercial educational FM translators operating on reserved channels. See Further Notice of Proposed Rule Making in MM Docket No. 86-112, adopted March 24, 1988, FCC 86-126.

[46] The booster rules were recently modified to permit signal delivery between a primary station and its booster facilities by any signal distribution technology the licensee deems feasible. See Report and Order in MM Docket No. 87-13, supra note 2.

[47] In our action in MM Docket No. 87-13 (high-power FM boosters) we have authorized use of broadcast auxiliary facilities on a secondary basis to deliver signals to FM booster stations. See Report and Order in MM Docket No. 87-13, supra note 2. We are considering a similar authorization for use of broadcast auxiliary facilities with noncommercial FM translators in MM Docket No. 86-112, also adopted today. (Alternate signal delivery technology use with noncommercial FM translators). See Further Notice of Proposed Rule Making in MM Docket No. 86-112, supra note 45.

[48] See e.g. Memorandum Opinion and Order, Docket 81-305, adopted June 30, 1981.

[49] See supra note 7.

[50] 47 U.S.C. §309(d)(1).

STATMENT OF COMMISSIONER JAMES H. QUELLO

Re: Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations.

It is difficult to object to a procedure whereby an administrative agency is merely soliciting information concerning regulatory policy. I can support this *Notice of Inquiry* because it *now* displays a sensitivity to the negative effects resulting from an expansion of our commercial FM translator rules. [1]

My preferred position would be to draft a *Notice of Proposed Rule Making* that looks towards tightening our existing translator rules. We have already received numerous comments in this proceeding documenting the need for strengthening our existing regulatory scheme. I believe we have a sufficient record to move forward now with a proceeding to tighten the rules. Neverthless, a more general discussion of the potential adverse impact of an expanded FM translator service may be useful. As long as we proceed to stricly enforce our existing translator rules, then the time spent in discussing this issue may assist the Commission in establishing a more rational set of regulations. Therefore, I can support issuing the *Notice of Inquiry* on this rather limited basis.

FOOTNOTE FOR STATEMENT

[1] At the meeting on March 25, 1988, adopting this *Notice of Inquiry*, I withheld my vote until a complete draft was available.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 87-312

In the Matter of

Amendment of Subpart C of Part 90
of the Commission's Rules to Permit
Commercial Enterprises to be
Licensed Directly in the Special
Emergency Radio Service

REPORT AND ORDER

Adopted: May 18, 1988; Released: June 13, 1988

By the Commission:

I. INTRODUCTION

1. In a *Notice of Proposed Rule Making* (*Notice)* issued in the above- captioned proceeding,[1] this Commission proposed to permit private entrepreneurs to be licensed in the Special Emergency Radio Service (SERS) to provide communications service to ten categories of eligible users including medical care providers and rescue squads.[2] In the *Notice* we also asked whether secondary use of ten channels known as the "MED" channels should be eliminated. The various comments and reply comments filed in response to the *Notice* are before the Commission for consideration.

2. In this *Report and Order* we take final action to permit private entrepreneurs or "private carriers" in the SERS. This action will expand communications service options available to eligible users and promote the efficient and effective use of the SERS frequencies. This *Report and Order* also eliminates secondary use of eight of the ten MED channels to enhance use of the SERS for emergency medical purposes.

II. BACKGROUND

A. *Current Rules and Options Available to Eligible Users*

3. Under present rules applicable to SERS, the Commission issues licenses only to persons and organizations eligible to communicate on the SERS frequencies. *See* 47 C.F.R. §§ 90.35 - 90.51. Private entrepreneurs cannot obtain licenses to offer communications service to SERS eligibles on the SERS frequencies.

4. A SERS eligible who wishes to communicate on the SERS frequencies has limited service options. The eligible may obtain a license and construct, operate, and maintain a system, either on its own or as part of a group of eligibles, such as a non-profit communications cooperative. *See* 47 C.F.R. § 90.35(a)(5). This option has the advantage of giving the licensee maximum control over its system. It has the disadvantage of encouraging many small incompatible systems to compete for use of the same spectrum and provides little incentive to modernize systems once installed. Moreover, starting such systems can be costly and time consuming.

5. The Commission's Rules do not prohibit private companies from acting as third party operators pursuant to management contracts with SERS eligibles. An eligible user could, therefore, alternatively obtain a license and then hire a private company to build, operate, and maintain its communications system. This option allows SERS licensees to delegate day-to-day communications responsibilities to a third party. Ultimately, however, the licensee is accountable to the Commission for operation of the system.

B. *Petition for Rule Making*

6. This proceeding began in December 1986 when ProNet, Inc., a supplier of medical equipment and communications systems, filed a petition for rule making. [3] In its petition, ProNet argues that the existing SERS licensing rules impede the full development of the SERS and delivery of communications service to the medical community. According to ProNet, the Commission should amend its rules to permit private carriers to be licensed in the SERS to serve eligible users in the medical services category.

7. Under the private carrier concept, an entrepreneur wishing to operate a communications system for eligible SERS users would apply to the Commission for a license. Once licensed, the entrepreneur would build a system and offer communications service on the system to eligible end users. The private carrier would be responsible for all aspects of system operation, including maintenance and licensing. End users could either purchase their own equipment or lease equipment from the private carrier. Private carriers, ProNet argues, could offer communications options especially tailored to the medical community's needs and could increase spectrum efficiency. ProNet argues that by increasing spectrum efficiency private carriers could make communications service more widely available and allow the largest feasible number of users to operate on the spectrum.

8. ProNet compares its proposal to permit private carriage in the SERS with the Commission's present rules allowing associations made up of two or more eligible organizations in the medical services category to offer communications services to their members. *See* 47 C.F.R. § 90.35(a)(5). These organizations, says ProNet, are not themselves directly involved in providing medical services, but offer communications services to those who are. Under ProNet's proposal, commercial licensees would be responsible for ensuring that all operations are conducted in accordance with the Commission's rules and regulations.

9. ProNet asks the Commission to permit private enterprises to be licensed directly in the SERS to serve eligible users in the medical services category – a group that ProNet believes can particularly benefit from private carrier services.[4] This group of users, like all SERS licensees, shares frequencies with other SERS categories. The medical services group also has 15 channels reserved for its use exclusively. Ten paired UHF frequencies known as MED channels 1 through 10 may be used on a primary basis for specific types of medical communications, most of which are for emergency situations.[5] These ten channels operate in the 460 MHz range. Five VHF simplex frequencies in the 155 MHz range also are reserved for eligible users in the medical services category.[6]

C. *Notice of Proposed Rule Making*

10. In September 1987, we issued a *Notice of Proposed Rule Making* proposing to grant ProNet's petition and to permit private carriers to offer service to all SERS eligibles, not only those in the medical services category. In the *Notice*, we considered a number of issues related to private carrier operation. We placed the greatest emphasis on the issues of interference, permissible communications, and eligibility.

11. Upon consideration of three factors, we concluded that private carriers might alleviate interference on the SERS frequencies. First, we considered commenters' experiences with third party communications managers, which are similar to private carriers in many ways. Commenters stated that third party managers have eliminated interference on their systems. *See Notice*, 2 FCC Rcd at 5555. Next, we noted that private communications companies would have a profit incentive to introduce advanced technology to the SERS frequencies. *Id.* From experience we know that advanced technology that improves spectrum efficiency can reduce congestion and interference. Finally, we considered the role of the recently established frequency coordination process.[7] We concluded that coordination might help to alleviate congestion and requested comment on all of these factors. *Id.* In response to a comment contending that wide area private carriers might limit frequency reuse, we also asked for comments concerning frequency reuse.

12. Another major issue raised in the *Notice* was permissible communications on the SERS frequencies. The *Notice* stated that private carriers would be required to observe existing restrictions on permissible uses of the SERS frequencies. *Notice*, 2 FCC Rcd at 5555. If offering services on channels reserved for the medical services category, for example, the private carrier would be required to verify the eligibility of its customers and to make sure that they transmit only those medical communications permitted under the Rules. In addition, we asked whether we should eliminate secondary usage of the ten UHF MED channels.

13. With regard to the issue of eligibility, the *Notice* stated that private carriers in the SERS would only be permitted to carry communications of eligible SERS users. *Notice*, 2 FCC Rcd at 5555; *see* 47 C.F.R. §§ 90.33 - 90.51. Some of those who commented on the ProNet petition thought that private carriers might nevertheless serve ineligible users. We concluded that the frequency coordination process and the vigilance of SERS eligibles themselves in monitoring the use of the frequencies will minimize this possibility. *Notice*, 2 FCC Rcd at 5555. We added that if a private carrier abuses its authorization, we would employ compliance sanctions.

14. The *Notice* tentatively concluded that licensing private carriers in the SERS would promote public safety, encourage the development of enhanced communications equipment, and increase spectrum efficiency. The *Notice*, therefore, proposed to amend the Rules to permit private carriers to be licensed in the SERS spectrum to serve all eligible SERS users – not only those in the medical services category. *Notice III*.

III. COMMENTS/DISCUSSION

15. We received 141 comments and 7 reply comments to the *Notice*.[8] Many hospitals support our proposal to license private carriers in the SERS because they think that private carriers would dramatically improve the efficiency of their medical communications. The American Society for Hospital Engineering of the American Hospital Association (ASHE) is representative of this hospital viewpoint:

> ASHE fully supports this rule change, provided commercial private carriers are authorized to provide services only to existing SERS users. Authorization of commercial carriers should lead to better communications in the SERS and ultimately to better response time in medical emergencies.

Comments of American Society for Hospital Engineering at 2. All 77 emergency medical service (EMS) providers, state agencies, and local agencies who responded to the *Notice*, however, oppose licensing private carriers in the SERS. As one of these commenters states:

> I can see no benefit for a private entrepreneur to enter communications network which is already over cluttered and congested, where interference is already too common and as such poses a hazard for advanced life support communications when time i[s] of the utmost premium.

Comments of Adrian M. Griffin, M.D. at 1.

16. The Newton Conover Rescue Squad's view demonstrates the strong convictions of these opposing commenters and their fear of the private carrier concept:

> PERMITTING COMMERCIAL ENTITIES TO MARKET, AND MAKE A PROFIT FROM THE LIMITED RADIO FREQUENCY RESOURCE THAT REMAINS TO THE EMERGENCY MEDICAL SERVICE COMMUNITY IS A TRAGEDY THAT SHOULD NOT BE ALLOWED TO HAPPEN.

Comments of Newton Conover Rescue Squad at 1 (emphasis in original).

17. We appreciate the concerns of the EMS commenters and recognize the importance of radio communications to the vital public services they perform. Yet, it appears that some of these commenters' concerns are misdirected because they interpret the *Notice* incorrectly. Some EMS providers, for example, believe that our proposal would permit private carriers to offer MED channel service to persons, such as veterinarians, who are not eligible in the medical services category. *See* Comments of North Carolina Region E EMS Council at 1. Others think that our proposal would allow the MED channels to be used for routine hospital paging. *See* Comments of Seven Lakes Rescue Squad, Inc. at 1; Comments of New Mexico Health and Environment Department at 1. Some believe that the Commission proposed to create a monopoly allowing only one private company (ProNet) to be licensed in SERS. *See* Comments of Gencom at 11. Such commenters expect that SERS licensees would have no option but to use a private carrier because all SERS spectrum would be removed from the public domain or because end users would lose

their leverage over third party contractors. *See* Comments of California Emergency Medical Services Authority at 3; Comments of Metromedia Paging Services at 6. One commenter fears that our proposal would permit private carriers to operate a ten channel trunked system on the UHF MED channels and devote the system exclusively to secondary communications. Comments of U.S. Department of Transportation, National Highway Traffic Safety Administration at 5. The rule changes that we proposed would not bring about any of these results. In view of these misunderstandings, which may have caused persons who might otherwise have supported our proposal to oppose it, it may be helpful to clarify the intent of this proceeding.

A. *Clarification of Notice*

18. Our proposal would give the special emergency community the additional option of obtaining communications service on the SERS frequencies from a private entrepreneur. SERS eligibles could continue, however, to use any of the other options currently available. Any present licensee, or any SERS eligible that might want to obtain a license and operate its own system in the future, could continue to operate on the SERS frequencies. We did not propose to take spectrum away from present users, nor did we propose to expand the classes of eligible end users. Private carriers could not offer service on their systems to general business users or any other party not eligible in SERS.[9] With respect to the ten UHF MED channels and five VHF medical frequencies, private carriers would be permitted to offer service only to eligible users in the medical services category.

19. Private carriers would be required to observe existing restrictions on the use of various SERS channels. A private carrier could not, for example, carry paging signals on frequencies where paging is not currently allowed. A number of commenters incorrectly believe that our proposal would permit private carriers to congest the ten UHF MED channels and five VHF medical frequencies with routine hospital paging. Because routine hospital paging is not allowed on any of the medical channels, however, private carriers could not make the channels available for that purpose.[10] Private carriers could not operate the UHF MED channels as a trunked system because our Rules do not provide for trunking on frequencies below 800 MHz. Private carriers and their customers would be required to observe existing restrictions, and any failure to observe these restrictions would subject the private carrier to FCC compliance sanctions. As we said in the *Notice* :

> We wish to be very clear that we do not propose changes in the eligibility in the Special Emergency Radio Service. Nor do we propose to alter in any way the restrictions on the use of particular SERS frequencies as set out in the limiting footnotes accompanying the frequency table. On the contrary, since private carriers must serve only present classes of eligibles on frequencies that those eligibles are permitted to use, we do not foresee any adverse impact on SERS operations. . . . [T]he primary uses on the MED channels for biomedical telemetry and personnel dispatch will remain unchanged. . . . Should the private carrier operate in violation of our rules, its license would be subject to revocation.

Notice, 2 FCC Rcd at 5555.

20. Finally, although this proceeding was initiated in response to a petition from ProNet, ProNet would not be the only private carrier permitted on the SERS frequencies. Under our proposal any entrepreneur could be licensed as a private carrier in a particular area. The actual number of entrepreneurs who will be able to compete successfully in a particular area will depend upon spectrum availability in that area,[11] the demand for private carrier services, and the quality of the services offered. With this general clarification, we now shall address specific issues raised in the comments to the *Notice*.

B. *The Potential for Interference and Congestion*

21. In the *Notice* we tentatively concluded that permitting private carriers to serve eligible SERS users may help reduce interference and congestion on the SERS frequencies. *Notice*, 2 FCC Rcd at 5555-56. We asked commenters to address this issue and specifically asked whether frequency coordination would help to eliminate interference and whether the potential for frequency reuse might be affected in wide area systems, such as those used by ProNet.

22. Virtually every commenter to the *Notice* addresses the problem of interference and congestion on the SERS frequencies. Those commenters who support our proposal to license private carriers in the SERS argue that the private carriers could alleviate interference. Thirty-five of these commenters currently contract with third party communications managers, which are similar to private carriers in many ways. Delaware Valley Medical Center's comments were typical:

> I can confidently state that our critical communications needs have been drastically improved and our medical staff is pleased to have a company who genuinely is concerned about health care communications.

Comments of Delaware Valley Medical Center at 1. Some commenters attribute the improvements to state-of-the-art equipment that they were unable to afford on their own but the third party manager made possible. *See* Comments of Watson Clinic at 1. ProNet attributes increased efficiency on systems it operates as a third party manager to a private entrepreneur's ability to combine smaller inefficient systems into one large efficient system. Comments of ProNet at 3. Commenters also predict that competition among private carriers will encourage efficient use of the spectrum:

> Competition among these entities will serve to introduce even greater technological innovations for the benefit of SERS users. Even those users who opt not to utilize a private carrier service will benefit from the reduction in congestion on these shared SERS channels.

Reply Comments of American Society for Hospital Engineering at 2; *see* Comments of Greater New York Hospital Association Services at 1.

23. On the other hand, 66 opposing commenters argue that private carriers would make present interference and congestion problems worse. Some think that carriers would use outdated equipment and provide minimal service in order to maximize profits. *See* Comments of Vir-

ginia Department of Health, Division for Emergency Medical Services at 8. Others argue that private carriers would increase congestion because they would attract more users to the SERS frequencies. *See* Comments of San Diego Communications and Electrical Division at 1. Emergency medical service providers are particularly concerned about the effect that any increased number of users might have on the transmission of life saving communications. The comments of the New England Council for Emergency Medical Services typify the EMS viewpoint on this issue:

> Commercial marketing that attracts additional users will only serve to increase the overload on the limited number of SERS frequencies. Non-medical users will fast overtake the frequency spectrum and add interference that could delay medical control which could ultimately cost lives.

Comments of The New England Council for Emergency Medical Services at 2.

24. We recognize that the SERS spectrum is crowded and that interference is a particular problem for EMS providers. Private carriers may be able to improve conditions in the SERS. The comments to the opposite effect are unpersuasive. First, there is no incentive for private carriers to offer inferior equipment and poor service that might cause interference. In fact, they would have a substantial economic incentive to do the opposite. A private carrier offering substandard service is unlikely to attract and keep customers.

25. Second, while we recognize that private carriers may increase the number of users of the SERS frequencies, we do not find this a reason to prohibit such operations on the SERS channels. In fact, this is one of the advantages of permitting private carriage. Private carriers using advanced technology and combining incompatible systems should enable more eligible users to operate on the same amount of spectrum. To the extent that private carriers may serve additional eligible users, with minimal effect on existing users, such service plainly is in the public interest and consistent with our objective to promote the widespread availability of communications service. *See* 47 U.S.C. § 332(a)(3).

26. Even commenters who oppose our proposal recognize the importance of broader SERS use. California's EMS agency, for example, while opposing private carriers in the SERS, is concerned about the lack of radios in many California hospitals. Comments of California Emergency Medical Services Authority, Attachment of Crippen Ambulance Service at 1. Some California ambulance services must rely on their dispatchers to contact hospitals by telephone because the hospitals do not have radios. *Id.* at 2. The National Highway Traffic Safety Administration reports that additional EMS communications capabilities are needed throughout the nation. Comments of National Highway Traffic Safety Administration at 2-3. Private carrier service is one means of promoting wider use of radio.

27. It should also be noted here that we have taken other steps to alleviate interference in the SERS and make it possible for private carriers to serve additional users with minimal impact on present users. After the date of the *Notice*, for example, we allocated additional spectrum to benefit Public Safety and SERS organizations. *Report and Order*, National Public Safety Plan, PR Docket No. 87-359, 3 FCC Rcd 905 (1988). This additional spectrum should help to ease overcrowding.[12]

28. A limited number of commenters address our tentative conclusion in in the *Notice* that frequency coordination, which is a relatively new in the SERS, would help to alleviate interference in the SERS and allow private carriers to operate compatibly with SERS licensees who operate their own systems. *Cf. Report and Order*, Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737, 103 FCC 2d 1093 (1986). Most of the commenters addressing this issue believe that the job of the frequency coordinator will become more difficult if we permit private carriers to be licensed because they will need to find spectrum for additional licensees in an already crowded spectrum. *See* Joint Comments of IMSA, IAFC, and NASED at 9. They anticipate disagreements between the coordinator and private carrier applicants regarding the frequencies recommended. *Id.* The commenters generally agree that the previous lack of coordination caused some of the past interference problems on the SERS frequencies and that the situation should improve somewhat. *See* Comments of California Public-Safety Radio Association, Inc. at 2. As one member of the SERS coordinating committee states:

> As the data base becomes more accurate, coordinator performance will also increase in accuracy, hopefully resulting in less interference and greater spectrum efficiencies.

Reply Comments of NABER at 3. As other members of the committee caution, however, the Commission should not rely exclusively on coordination to eliminate interference:

> The coordinators cannot transform the principles of electronics. To the extent that frequencies are congested, the coordinator cannot mitigate congestion.

Joint Comments of IMSA, IAFC, and NASED at 9.

29. We recognize that it may not be possible to eliminate all interference. We expect, however, that frequency coordination will reduce interference on the SERS frequencies and enable private carriers to operate on the frequencies with the least impact on other licensees. We see nothing inherent in the private carrier concept that should make coordination more difficult. Any private carrier consolidation of end users should reduce the total number of licensees to coordinate, making the coordinator's job easier. If the frequency coordinator is unable to find SERS spectrum to accommodate private carriers in a particular area, the coordinator may recommend that the applicant operate a Specialized Mobile Radio System (SMRS) or private carrier paging service on frequencies 800 MHz and above. *Cf.* 47 C.F.R. Part 90, Subparts P and S.

30. Only a few commenters address the frequency reuse issue raised in the *Notice*. The commenters, other than ProNet, who address the issue are concerned that wide area systems might limit reuse of the frequencies. The National Ski Patrol System argues that small emergency services could not compete with larger and more powerful

systems. Comments of National Ski Patrol System at 4-5. NABER argues that wide area systems can reduce reuse of spectrum:

> the ProNet plan may limit frequency reuse by encouraging the implementation of wide area systems. . . . Such systems could result in the "overrun" of smaller in-house paging systems which would be forced to take service from the wide area third party provider.

Comments of NABER at 5-6.

31. ProNet maintains that wide area systems are more efficient because they consolidate numerous individual systems now responsible for interference among themselves. Comments of ProNet at 3. ProNet also argues that small in-house systems that do not consolidate can operate compatibly with wide area systems because the Commission's rules requiring monitoring of channels would not permit wide area systems to override in-house systems. The Rules provide:

> Licensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

47 C.F.R. § 90.405(e).

32. With respect to use of wide area systems for paging on low power SERS paging channels, ProNet states:

> These low [power] limits make it impossible for large wide-area systems to operate. On the other hand, these channels are ideally suited for the coordinator to recommend for small in-house type paging systems. In sum, small in-house systems will continue to exist along with private carrier systems.

Reply Comments of ProNet at 13 (footnotes omitted).

33. The Commission's Rules generally require licensees to use no more power than necessary for satisfactory operations. *See* 47 C.F.R. § 90.205(a). It is true that low power systems are at a natural disadvantage to wide area systems that may need more power to meet their communications requirements. The presence of local, lower-powered systems is not sufficient justification, however, to deny access to a wide area system that will operate in accordance with our Rules. Under the Rules, licensees of wide area systems must cooperate with other licensees to reduce or avoid interference so that each may operate compatibly. *See* 47 C.F.R. §§ 90.173 and 90.403. Wide area systems and local systems both are possible under the present Rules and co-exist today. While it is possible that allowing private carriers into the SERS may bring about more wide area systems, communications cooperatives and third party communications managers currently use such systems and cooperate with smaller local systems. Because the Rules will also require private carriers to cooperate with local systems, we see no reason to prohibit private carriers from operating wide area systems.

C. *SERS Frequencies On Which Private Carriers May Operate*

34. ProNet originally asked that private carriers be permitted to serve medical service eligibles. In the *Notice*, we proposed to permit private carriers to serve all classes of SERS eligibles, not only those in the medical services category. This expansion of the SERS private carrier concept is not an issue among the commenters. Rather, the commenters focus on whether private carriers should be able to serve medical service eligibles who operate on frequencies reserved for medical services only.

35. There was considerable interest about this issue among EMS providers and state EMS agencies. Seventy-seven commenters argue that private carriers should not be allowed to operate on frequencies that EMS units operate on, such as the UHF MED channels and VHF medical frequencies, because they might affect the safety of EMS operations. One local EMS organization sums up these arguments:

> These medical channels are used for transmitting electrocardiograms (ECG's) by way of telemetry to the emergency department for physicians to use to prescribe treatment in the prehospital setting. . . . [Giving a] private entrepreneur the opportunity of utilizing the public medical channels for some commercial enterprise endangers the health, safety and welfare of patient victims requiring prompt emergency care.

Comments of Detroit-Wayne County Emergency Medical Services Council at 1.

36. We do not find opposing arguments on this issue persuasive because they overlook the fact that private carriers will only be allowed to offer medical channel service to eligible medical end users. Whether an eligible medical organization obtains access to the medical frequencies directly through the Commission's licensing procedures or through a private carrier, it is subject to the same use restrictions and eligibility standards. Because this proceeding does not expand eligibility or permissible use of the medical frequencies, there should be no negative impact on users.

37. We find, moreover, that private carriers are in a better position than end users to develop innovative radio applications that will enhance the safety uses of the medical frequencies. For example, private carriers may offer advanced features such as automatic prioritization of emergency traffic and improve the efficiency of these communications. Thus, by including private carriers in the SERS, we may increase safety on the medical frequencies. We shall, therefore, permit private carriers to operate on all SERS frequencies, including those that can be used only for medical communications.

D. *Permissible Communications on the Medical Frequencies*

38. In the *Notice*, we asked whether secondary uses of the ten UHF MED channels should be eliminated. Virtually every EMS provider and state EMS agency who submitted comments would prefer if all of the UHF and VHF medical frequencies were devoted exclusively to emergency use and some go so far as to suggest that the entire SERS spectrum be reallocated for emergency medical use. *See* Comments of National Ski Patrol at 6. These sugges-

tions clearly go beyond the scope of this proceeding. The *Notice* inquired only whether the Commission should eliminate secondary use of the ten UHF MED channels and we shall limit our discussion to the MED channels. It will be helpful first to identify the primary and secondary uses currently permitted on these channels.

1. *Current Primary and Secondary Uses of the MED Channels*

39. The UHF MED channels may be used on a primary basis only for specific types of medical communications. MED channels 1, 2, and 3 may be used for biomedical telemetry, such as the transmission of electrocardiograms between ambulances and hospitals. 47 C.F.R. §§ 90.53(a), (b)(15)(i), and (b)(19). MED channels 4 through 8 may be used for specific types of communications such as those between ambulances and emergency room physicians. 47 C.F.R. §§ 90.53(a), (b)(15)(i), and (b)(20). These channels make it possible for paramedics to obtain instructions related to the care of patients who are being transported to hospitals. MED channels 9 and 10 may be used on a primary basis for medical dispatch and mutual assistance purposes. 47 C.F.R. §§ 90.53(a) and (b)(16).

40. The MED channels also have secondary uses. On a secondary basis, eligible users in the medical services category may use MED channels 1 through 8 for non-primary medical transmissions and administrative communications consistent with Section 90.35(a) of the Rules. *See* 47 C.F.R. §§ 90.53(a), (b)(19), and (b)(20). These secondary uses can range from emergency voice communications on a channel primarily reserved for medical data to administrative communications for hospital housekeeping, maintenance, and security purposes. The secondary uses of MED channels 9 and 10 are limited to the paging of ambulance and rescue squads. 47 C.F.R. §§ 90.53(a), (b)(16), and (b)(25). As we stated earlier, routine paging is not permitted on the MED channels even on a secondary basis. Under our Rules, the MED channels may only be used for secondary communications if such communications would not cause interference to primary communications.

2. *Comments*

41. Eighteen of the twenty-one commenters who address permissible communications on the MED channels favor eliminating secondary use or taking similar action. Some of the commenters believe that the Commission's current Rules do not recognize the difference between emergency medical communications and routine medical communications. *See* Comments of Burke County Office of Emergency Management at 1. Others fear that if we license private carriers the medical frequencies could become overrun with hospital security guards, maintenance workers, and janitors using the frequencies on a primary basis. *See* Comments of Seven Lakes Rescue Squad at 1. The Durham Police Department's views are representative of the comments discussing this issue:

> The FCC does not acknowledge a difference between "medical control physician direction communications" to EMT advanced life support teams and "hospital security or hospital housekeeping" radio communications. . . . This proposed new action by the FCC will further reduce the availability of frequencies for medical control communications.

Comments of Durham Police Department at 1-2.

42. The Commission's Rules do distinguish between emergency medical communications and routine medical communications. Emergency communications take priority on all SERS frequencies because the Rules provide that "[c]ommunications involving the imminent safety-of-life or property are to be afforded priority by all licensees." 47 C.F.R. § 90.405(d). With respect to the medical frequencies, some channels are devoted entirely to emergency medical communications on a primary basis. *See* 47 C.F.R. §§ 90.53(a), (b)(15)(i), (b)(19), and (b)(20). Hospitals cannot use the medical channels on a primary basis for housekeeping and maintenance communications because administrative uses are permitted only on a secondary basis and only on some channels. Eliminating secondary use of the MED channels, therefore, cannot be based on a failure of our Rules to provide priority for emergency communications.

43. Two more compelling reasons to modify secondary use on the MED channels are congestion that currently exists on these channels and the resulting incompatibility between current primary and secondary uses. It appears that at times there are not enough MED channels for the number of EMS providers who need to use the channels on a primary basis. According to one commenter who uses the channels for physician to ambulance control:

> In my 8 years of experience with advanced life support programs there have been numerous times of different units competing for the same frequency. This obviously makes it difficult to get a clear picture of the patient's problems and give orders for their early treatment.

Comments of Buncombe County Advanced Life Support Program, George Houlditch, M.D. at 1.

44. As the Colorado Department of Public Health suggests, secondary use can cause congestion and interfere with primary life saving communications. *See* Comments of Colorado Department of Public Health at 1-2. One organization might need a channel for a primary use but another organization might already legitimately be using the channel for a secondary use.[13] In this situation, the user with the primary communication would need to search for another channel on which to transmit or wait for the secondary use of the frequency to cease. As Colorado states:

> In this type of situation the secondary usage becomes primary and the primary usage secondary. This is not speculative and, in fact, is occurring in many parts of the country.

Comments of Colorado Department of Public Health at 2.

45. The scenario that Colorado describes is of great concern because time is of the essence in emergency communications. To save a heart attack victim's life, for example, advanced life support procedures such as cardiac defibrillation must begin within eight minutes. Comments of Virginia Association of Volunteer Rescue Squads at 1 citing American Heart Association Advanced Cardiac Life Support Guidelines. The Virginia Association of Rescue Squads explains the time considerations that EMS providers must work within and their dependence on the radio throughout an emergency call:

> Response of emergency medical vehicles and personnel to such emergencies depends on: [1] Immediate radio dispatch and alerting of personnel; [2] Continuing communications en route to the scene of the emergency; [and] [3] Immediate communications with a hospital based physician for medical control, including instructions to administer intravenous drugs and to perform cardiac defibrillation. Obviously, no waiting time for access to a radio frequency is acceptable.

Comments of Virginia Association of Volunteer Rescue Squads at 2.

46. A few commenters otherwise opposed to our proposal to license private carriers state that they would support our proposal if we eliminate secondary uses of the MED channels. *See* Comments of Massachusetts Department of Public Health at 1. Even ProNet, which does not believe that it is necessary to eliminate secondary uses, concedes that "to the extent that secondary communications cause interference to primary communications these communications must cease." Comments of ProNet at 7.

47. In light of the present congestion on the MED channels, potential for additional congestion from incompatible secondary use, and important public safety functions of these channels it is appropriate to eliminate secondary use of some of the MED channels. After giving the matter serious consideration, we conclude that we shall eliminate secondary use of MED channels 1 through 8 but maintain secondary use of MED channels 9 and 10.

48. The primary use of MED channels 1 through 8 for biomedical telemetry and medical control is not compatible with secondary administrative and medical use, given existing crowding on the spectrum. The length of the voice and data messages transmitted on a secondary basis can delay primary emergency communications. By eliminating secondary use of MED channels 1 through 8, the channels will be available continuously for life saving transmissions. We find that this analysis does not extend to MED channels 9 and 10, however. Primary use of these two channels for medical dispatch and mutual aid is compatible with secondary use for paging of ambulance personnel and rescue squads. Secondary paging should not affect primary two-way medical dispatch significantly because paging occurs in short bursts and will not use a significant amount of air time. In addition, the secondary use of MED channels 9 and 10 for alerting the proper personnel is a very narrow use that is an integral part of the primary EMS operations on those channels.

49. We recognize that there are some disadvantages that might occur from eliminating secondary uses of MED channels 1 through 8. It is possible that some of these channels may not be used for periods of time while other frequencies become crowded. It is also possible that hospitals that now use one radio system might need to purchase additional equipment to operate two separate systems: one for emergency medical needs and one for medical and administrative needs. We conclude, however, that the availability of channels for life saving communications must be of primary concern. This conclusion is consistent with our congressional directive to promote "safety of life and property through use of wire and radio communication." Communications Act of 1934, 47 U.S.C. § 151; *see* 47 U.S.C. § 332(a)(1).

50. So that licensees who currently use the MED channels on a secondary basis will have adequate time in which to relocate their secondary communications to other frequencies, we will permit them to continue their secondary use of MED channels 1 through 8 until July 1, 1990, approximately two years from the release date of this *Report and Order*. In the interest of spectrum efficiency and our desire to be responsive to local needs, we will consider requests for waiver of the secondary use restriction from new and existing licensees who can show that, in their areas, secondary uses of MED channels 1 through 8 are not harmful to primary communications. *Cf.* 47 C.F.R. § 90.151.

51. Eliminating secondary uses of MED channels 1 through 8, while not directly related to private carrier operations, should alleviate the concerns of those commenters that believe private carriers would bring about an increase in secondary uses of the MED channels or otherwise hinder primary emergency efforts on the MED channels. *See* Comments of The New England Council for Emergency Medical Services at 2; Comments of APCO at 4. In light of our decision to eliminate secondary use of MED channels 1 through 8, such concerns are moot. With the issue of secondary use resolved we return to our evaluation of arguments related more directly to our licensing of private carriers in the SERS.

E. *The For-Profit Nature of Private Carriers*

52. Eighteen commenters focus on the profit motives of private carriers, arguing that private carriers and non-profit SERS organizations are incompatible. The following comment is representative:

> EMS agencies must not be subject to compete with commercial enterprises for the same frequency assignments. The profit-making motivations and objectives of entrepreneurs, however legitimate, honest and well-meaning, are different from the public-service goals and objectives of EMS agencies.

Comments of Texas Bureau of Emergency Management at 5-6.

53. The commenters' reasons for objecting to the profit motives of private carriers vary. Some believe that private carriers will not cooperate with non-profit emergency rescue organizations to minimize interference. *See* Comments of California Emergency Medical Services Authority at 3. Others argue that the primary concern of non-profit medical services licensees is patient care while the primary concern of private carriers will be selling communications service:

> We volunteer our time, money and skills to help the citizens of our County. ProNet in our opinion is only interested in selling more of their communications equipment, not in patient care. Please help us keep our radios free of routine conversations so we might be able to provide the best patient care possible.

Comments of Alexander Rescue Squad at 1.

54. As we stated above, we anticipate that private carriers can provide improved communications service to SERS end users. We have considered the comments of non-profit SERS eligibles that fear entrepreneurial private

carriers but we conclude that both groups can use the same frequencies compatibly. Because a private carrier's primary business is providing communications services, it is likely to develop advanced services that SERS eligibles, whose primary business is patient care, would not develop on their own. The private carrier is in the best position to initiate innovative communications services and it has an economic incentive to serve the needs of its potential not-for-profit customers.

55. In addition, organizations that have used third party contractor service believe that private carriers would have goals compatible with non-profit SERS users. As one commenter states:

> a commercial company can adhere to the current medical eligibility rules and provide a technically superior communications link for the medical community.

Comments of University of Texas Health Science Center at Houston, Office of Telecommunication Services at 1. Because the characteristics of such third party managers are much like those of private carriers, this evidence further bolsters our conclusion that private carriers will operate compatibly with current SERS eligibles. In fact, private carriers should prove even more cooperative with non-profit end users than third party managers because private carrier licensees will be directly accountable to the Commission for their actions. *Cf. Memorandum Opinion and Order on Reconsideration*, Cooperative Use and Multiple Licensing, Docket No. 18921, 93 FCC 2d 1127 (1983).

F. *Cost of Service*

56. Some commenters are concerned that using private carrier service will be too expensive. Many SERS users have limited budgets and have invested a great deal of money in their present communications systems. *See* Comments of Georgia Department of Human Resources at 1. Some commenters think that monthly fees payable to the private carriers would soon exceed the cost of owning and maintaining one's own equipment. *See* Joint Comments of IMSA, IAFC, and NASED at 11. Others argue that private carriers would eliminate small system competition and cause prices to increase. *See* Comments of Dr. Michael Christ Trahos at 2-3. The National Highway Traffic Safety Administration points out that SERS users can receive federal funds to purchase equipment but probably would not be able to receive federal funds to contract for long term service with a private carrier. Comments of U.S. Department of Transportation, National Highway Traffic Safety Administration at 8. Some commenters, however, believe that private carriers will offer better service at a lower cost. As one commenter states:

> the technical expertise provided by private carriers will lead to . . . spectrum efficiencies, lower costs and improved communications services.

Comments of American Society for Hospital Engineering at 4.

57. Concerns about cost of service do not form a basis for prohibiting private carriers to operate on SERS frequencies. SERS organizations considering using private carrier services may find the service to be more expensive or less expensive than their present communications system depending upon their own individual circumstances. For example, private carrier service may be a good option for new users who need to lower their start-up costs. Monthly payments may better suit some budgets. Users may find it preferable to concentrate on medical services rather than having to devote the staff and money required to construct, operate, and maintain a communications system. Competition between private carriers and the availability of the existing communications options may keep the price of private carrier service down. *See* Reply Comments of ProNet at 10-11.

58. Any organization that does not want to use a private carrier, for cost or any other reason, can operate its own system. If lack of federal funding for private carrier service prevents an eligible user from using this new option, for example, that eligible user could elect to establish its own system or share a system with other eligible end users. The Commission leaves it to the SERS users to decide whether private carrier service is the right option for them.

G. *Service to Non-Eligibles*

59. Several commenters believe that a potential for abuse of the SERS frequencies would exist if private carriers were permitted in the SERS. These commenters understand that eligibility requirements in the SERS will not change. They believe, however, that private carriers will not be as vigilant as the Commission in assuring that only eligible persons use the SERS frequencies. Comments of Gencom at 3-7. Under the present rules organizations that communicate on the SERS frequencies must obtain licenses from the Commission and be screened for eligibility by both the Commission and the SERS frequency coordinator. In private carrier systems, the Commission would license the private carrier and the carrier would be responsible for ensuring that only eligible users operate under its authority. *See* 47 C.F.R. § 90.179(b). The frequency coordinator's screening responsibilities would relate more to the eligibility of the private carrier than to the eligibility of its end user customers. Gencom, a common carrier communications company and the commenter most concerned with this issue, states:

> The economic pressure on SERS private carriers will inevitably lead, at best, to resolving marginal questions of eligibility in favor of qualification, and, all too often in Gencom's view, to outright distortion of or disregard for the eligibility rules.

Comments of Gencom at 4.

60. The SERS frequency coordinator is concerned about the possibility of service to non-eligibles as well. It urges the Commission to "create strict accounting by the [private carrier] and enforcement mechanisms to prevent against abuses." Comments of NABER at 5; Joint Reply Comments of IMSA, IAFC, and NASED at 13-14, note 23.

61. In the *Notice* we indicated our expectation that abuse would not occur because SERS users will self-police their spectrum. *Notice*, 2 FCC Rcd at 5556. We also noted that the Commission's compliance sanctions would deter private carriers from offering SERS service to non-eligible customers. A few commenters thought that it might be difficult to self-police the SERS spectrum because it would be hard to verify the eligibility of users transmitting non-

voice messages such as those that are digital, alphanumeric, or tone only. *See* Reply Comments of Chicago Communications Service at 5.

62. We agree that it is vital that private carriers not offer service to users who are not eligible. We will not assume non-compliance with our Rules, however. Because private carriers will be directly accountable to the Commission for their actions, there is no reason to believe that private carriers would be any less diligent than end users in complying with channel restrictions. Commission compliance sanctions and the private carriers' own efforts should prevent unauthorized use of the SERS frequencies. In addition, there is an independent way to verify that the private carriers are serving only SERS eligibles. NABER suggests that private carriers should be required to maintain customer lists. Comments of NABER at 5. Our Rules already require existing private carriers to maintain customer lists and make these lists available to the Commission or frequency coordinators. 47 C.F.R. § 90.179(e). Once private carriers are licensed in the SERS this Rule will apply to them as well.

H. *Compatibility With State EMS Plans*

63. Several state and local agencies express concern over the compatibility of private carriers with EMS Plans in their areas. Massachusetts, for example, has a statewide network of communications centers that assign channels to EMS providers based on the medical condition of the patient. Comments of Massachusetts Office of Emergency Medical Services at 2. States and regions with such plans do not believe that the plans would be as effective if private carriers were allowed to operate on the same frequencies without regard to the plans. *See* Comments of Arkansas Department of Health at 1; Comments of New England Council for Emergency Medical Services at 2. California's Emergency Medical Service Authority is concerned that private carriers may place their antennas at "unacceptably high" locations or operate at increased power in order to improve their marketing position over each other. Comments of California Emergency Medical Service Authority at 2.

64. The Rules establish maximum power standards and require cooperation between licensees. 47 C.F.R. §§ 90.205, 90.173(b), and 90.403(e). Private carriers will be subject to these power restrictions and will have to cooperate with all co-channel licensees including states who are licensed to operate EMS systems.

65. Six commenters complain that the frequency coordinator is not working with the states to address local communications concerns. They, therefore, do not believe that the frequency coordinator will properly consider state plans when recommending frequencies for a private carrier. *See* Comments of Florida Governor's Office at 2; Comments of APCO at 3-4. To the extent that the commenters' concerns lie in the frequency coordination process, these concerns do not affect our action concerning private carriers. The frequency coordination process as it stands now will address such concerns as the power of transmissions and location of transmitters. We expect the coordinator to comply with state plans to the extent possible. We recognize, however, that the frequency coordinator may not always be able to accommodate the needs of state EMS plans because the coordinator must also address the needs of non-EMS eligibles.

IV. DECISION

66. Upon consideration of the comments received and our own experience with SERS spectrum users, we have decided to allow commercial entities to offer private carrier service to all present classes of SERS eligibles, including medical service eligibles. Private carriers shall be required to observe restrictions on the use of the SERS frequencies and must pay particular attention to restrictions on paging and restricted uses of the channels reserved for the medical services category. We also have decided to eliminate secondary use of MED channels 1 through 8. This action will permit emergency medical care providers to use radio communications in the most effective way for life saving transmissions. We shall permit current licensees to continue their secondary use of MED channels 1 through 8 until July 1, 1990. A waiver procedure will also be available to new and existing licensees.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

67. The Commission is adopting this Order to license private carriers in the SERS. This action will have a favorable effect on special emergency entities by providing them with an additional service option and by promoting efficient use of the SERS spectrum. This action also provides opportunities for small businesses to operate as private carriers. By eliminating secondary use of MED channels 1 through 8, this action will also have a favorable impact on emergency medical service providers, many of which are small businesses. Only one commenter, the Virginia Association of Volunteer Rescue Squads, specifically addressed the Initial Regulatory Flexibility Analysis incorporated into our *Notice* pursuant to 5 U.S.C. § 603. We addressed this commenter's concerns by eliminating secondary use of MED channels 1 through 8. Aside from maintaining the status quo, there are no significant alternatives besides those considered in this Order.

VI. PAPERWORK REDUCTION ACT STATEMENT

68. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new form or information collection requirement.

VII. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED that, pursuant to the authority of Sections 4(i), 303(r) and 331(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r) and 332(a), Part 90 of the Commission's Rules, 47 C.F.R. Part 90, IS AMENDED as set forth in Appendix B below, effective **July 25, 1988.**

70. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX A

COMMENTS

Alabama Office of Telecommunications, Montgomery, Alabama

Alabama Department of Public Health, Montgomery, Alabama

Alamance County Rescue Unit, Inc., Graham, North Carolina

Alexander Rescue Squad, Inc., Taylorsville, North Carolina

American Society for Hospital Engineering of the American Hospital Association, Chicago, Illinois

American Petroleum Institute, Washington, D.C.

AMI Frye Regional Medical Center, Hickory, North Carolina

Anaheim Memorial Hospital, Anaheim, California

Arkansas Department of Health, Little Rock, Arkansas

Associated Public-Safety Communications Officers, Inc., (APCO), New Smyrna Beach, Florida

Buncombe County Advanced Life Support Program, Asheville, North Carolina (2 comments)

Buncombe County Emergency Medical Services, Asheville, North Carolina

Burke County Office of Emergency Management, Morganton, North Carolina

Calabash Volunteer Rescue Squad, Calabash, North Carolina

Caldwell County Office of Protective Services, Lenoir, North Carolina

Caldwell County Manager's Office, Lenoir, North Carolina

Caldwell County Sheriff's Department, Lenoir, North Carolina

Caldwell Memorial Hospital, Inc., Lenoir, North Carolina

California Emergency Medical Services Authority, Sacramento, California

California Public-Safety Radio Association, Inc., Los Angeles, California

Capitol Hill Hospital, Washington, D.C.

Catawba County EMS, Newton, North Carolina

Catawba Memorial Hospital, Hickory, North Carolina (2 comments)

Charlotte Memorial Hospital and Medical Center, Inc., Charlotte, North Carolina

Cherokee Health Delivery System, Cherokee, North Carolina

Children's Hospital of Philadelphia, Philadelphia, Pennsylvania

Claremont Rescue Squad, Inc., Claremont, North Carolina

Clay County Emergency Management Coordinator, Hayesville, North Carolina

Clay County Manager's Office, Hayesville, North Carolina

Colorado Department of Public Health, Denver, Colorado

Connecticut Department of Health Service, Office of Emergency Medical Services, Hartford, Connecticut

Cumberland County Rescue Squad, Inc., Fayetteville, North Carolina

Delaware Valley Medical Center, Langhorne, Pennsylvania

Delaware Department of Health and Human Services, Division of Public Health, Dover, Delaware

Detroit-Wayne County Emergency Medical Services Council, Westland, Michigan

Detroit-Wayne County Emergency Medical Services Council, Communications and Transportation Committee, Westland, Michigan

Doctors Hospital, Houston, Texas

Durham Police Department, Durham, North Carolina

East Carolina University School of Medicine, Greenville, North Carolina Emergency Physicians of Tidewater, Rocky Mount, North Carolina (4 separate form comments)

Fair Oaks Hospital, Fairfax, Virginia

Florida Governor's Office, Tallahassee, Florida

Forsyth County Emergency Medical Service, Winston-Salem, North Carolina (2 comments)

Forsyth County Fire Department, Winston-Salem, North Carolina

French Hospital, Los Angeles, California

Garfield Medical Center, Monterey Park, California

Gencom Incorporated, Washington, D.C.

Georgia Department of Human Resources, Atlanta, Georgia

Greater Laurel Beltsville Hospital, Laurel, Maryland

Greater New York Hospital Association Services, Inc., New York, New York

Adrian M. Griffin, M.D., Mount Airy, North Carolina

Hawaii Department of Health, Emergency Medical Systems Branch, Honolulu, Hawaii

Hawaii Office of State Planning, Honolulu, Hawaii

HCA Heritage Hospital, Tarboro, North Carolina

Health Hill Hospital, Cleveland, Ohio

Hillcrest Hospital, Mayfield Heights, Ohio

Huron Road Hospital, Cleveland, Ohio

Illinois Masonic Medical Center, Chicago, Illinois

International Municipal Signal Association, International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors, (IMSA, IAFC, and NASED), Washington, D.C.

Iowa Department of Public Health, Des Moines, Iowa

Iredell County Emergency Communications Center, Statesville, North Carolina

Long View Police Department, Hickory, North Carolina

Macon County, Franklin, North Carolina

Massachusetts Department of Public Health, Boston, Massachusetts

McDonagh Medical Center of Texas, Inc., Houston, Texas

McDowell County Emergency Management Agency, Marion, North Carolina

McDowell County Emergency Medical Services, Marion, North Carolina

McDowell County EMS Advisory Council, Marion, North Carolina

McDowell County Rescue Squad, Inc., Marion, North Carolina

Medical Area Service Corporation (MASCO), Boston, Massachusetts

Merritt Peralta Medical Center, Oakland, California

Metromedia Paging Services, Inc., Washington, D.C.

Metropolitan Dade County Association of Fire Fighters No. 1403, Miami, Florida

Morehead Memorial Hospital, Eden, North Carolina

Motion Picture and Television Fund, Woodland Hills, California

National Association of Business and Educational Radio, Inc., (NABER) Washington, D.C.

National Association of State Emergency Medical Service Directors, Lexington, Kentucky

National Ski Patrol System, Inc., Lakewood, Colorado

Neuse River Council of Governments, New Bern, North Carolina

New England Council for Emergency Medical Services

New Hampshire Department of Health and Human Services, Division of Public Health Services, Exeter, New Hampshire

New Hanover County Department of Emergency Medical Services, North Carolina

New Mexico Health and Environment Department, Santa Fe, New Mexico

Newton Conover Rescue Squad, Inc., Newton, North Carolina

North Carolina Association of Emergency Medical Service Administrators, Salisbury, North Carolina

North Carolina Association of Rescue and Emergency Medical Services, Inc., Goldsboro, North Carolina

North Carolina Memorial Hospital, Chapel Hill, North Carolina

North Carolina Region E EMS Council, Hickory, North Carolina

North Carolina Region I EMS Council, Winston-Salem, North Carolina

North Carolina Region M Council of Governments, Fayetteville, North Carolina

Northwest Piedmont Council of Governments, Winston-Salem, North Carolina (2 comments)

Onslow County Emergency Medical Services, Jacksonville, North Carolina

Parkland Memorial Hospital, Dallas, Texas

ProNet, Inc., Washington, D.C.

Robert F. Kennedy Medical Center

Rockingham County EMS, Eden, North Carolina

Rowan County Department of Emergency Services, Salisbury, North Carolina

St. Mary's Hospital, Galveston, Texas

St. Paul Medical Center, Dallas, Texas

San Diego Communications and Electrical Division, San Diego, California

Seton Health Services

Seven Lakes Rescue Squad, Inc., West End, North Carolina

Sheppard and Enoch Pratt Hospital, Baltimore, Maryland

Sherman Hospital, Elgin, Illinois

Shriners Hospital for Crippled Children, Los Angeles, California

Southeastern Massachusetts EMS Council, Inc., Region Five, Hyannis, Massachusetts

Special Industrial Radio Service Association, Inc., Washington, D.C.

Stokes County Emergency Medical Service, Danbury, North Carolina

Stokes County Manager's Office, Danbury, North Carolina

Surry County Emergency Medical Service, Mount Airy, North Carolina

Surry County Sheriff's Office, Dobson, North Carolina

Tahoe-Douglas Fire Protection District, Zephyr Cove, Nevada

Tampa General Hospital, Tampa, Florida

Taylorsville Police Department, Taylorsville, North Carolina

Ten Broeck, Hickory, North Carolina

Texas Department of Health, Bureau of Emergency Management Michael Christ Trahos, D.O., Falls Church, Virginia

United States Department of Transportation, National Highway Traffic Safety Safety Administration, Washington, D.C.

University General Hospital, Seminole, Florida

University of Texas, Health Science Center at Dallas, Department of Biomedical Communications, Dallas, Texas

University of Texas, Health Science Center at Houston, Office of Telecommunication Services, Houston, Texas

University of Texas, Health Science Center at Houston, Medical School, Houston, Texas

Utah Department of Health, Emergency Medical Services Bureau, Salt Lake City, Utah

Valdese General Hospital, Valdese, North Carolina

Vermont Department of Health, Emergency Medical Services Division, Burlington, Vermont

Virginia Association of Volunteer Rescue Squads, Inc., Richmond, Virginia

Virginia Department of Health, Division of Emergency Medical Services, Richmond, Virginia

Wake County, Raleigh, North Carolina

Watson Clinic, Lakeland, Florida

Western Medical Center, Santa Ana, California

Western Piedmont Council of Governments, Hickory, North Carolina

West Virginia Governor's Office of Community and Industrial Development, Charleston, West Virginia

Woodruff Community Hospital, Long Beach, California

Wyman Park Health System, Inc., Baltimore, Maryland

REPLY COMMENTS

American Society for Hospital Engineering of the American Hospital Association, Chicago, Illinois

Chicago Communication Service, Inc., Franklin Park, Illinois

International Municipal Signal Association, the International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors, Washington, D.C.

National Association of Business and Educational Radio, Inc., Washington, D.C.

ProNet, Inc., Washington, D.C.

Telocator Network of America, Washington, D.C.

Michael Christ Trahos, D.O., Falls Church, Virginia

APPENDIX B

1. Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

2. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

Part 90 - Private Land Mobile Radio Services

3. Section 90.33 is revised to read as follows:

§ 90.33 Scope.

The Special Emergency Radio Service covers the licensing of the radio communications of the following categories of activities: Medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishment in isolated places, communications standby facilities, and emergency repair of public communications facilities. Private carriers may also be licensed in the Special Emergency Radio Service solely to provide radio communications service below 800 MHz to any other eligible. Rules as to eligibility for licensing, permissible communications and classes and number of stations, and any special requirements as to each of these categories are set forth in the following sections. Frequencies available for these categories of services are shown in a separate frequency table.

2. Section 90.52 is added to read as follows:

§ 90. 52 Private Carriers.

(a) *Eligibility*. Private carriers, as defined in § 90.7, may be licensed on frequencies below 800 MHz solely to provide service to any other Special Emergency Radio Service eligible, subject to the requirements and limitations set out for use of the frequencies listed in § 90.53.

3. Section 90.53 is amended by revising paragraphs (b)(19) and (20) to read as follows:

§ 90. 53 Frequencies available.

* * * * *

(b) * * *

(19) This frequency is authorized for use under § 90.35(a) only for operations in bio-medical telemetry stations. F1B, F1D, F2B, F2D, F3E, G1B, G1D, G2B, G2B, G2D, and G3E emissions may be authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

(20) This frequency is authorized for use under § 90.35(a), only for communications between medical facilities vehicles and personnel related to medical supervision and instruction for treatment and transport of patients in the rendition or delivery of medical services. F1B, F1D, F2B, F2D, G1B, G1D, G2B, G2D, F3E and G3E emissions are authorized. Licensees authorized prior to July 1, 1988 may use this frequency on a secondary basis for any other permissible communications consistent with § 90.35 provided that such secondary use must cease no later than July 1, 1990.

FOOTNOTES

[1] Notice of Proposed Rule Making, PR Docket No. 87-312, 2 FCC Rcd 5554 (1987).

[2] Parties eligible to use the SERS frequencies are medical services, rescue organizations, veterinarians, physically handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas where radio is the only feasible means of obtaining emergency assistance, communications standby facilities for common carriers normally carrying essential public safety communications, and persons making emergency repairs to public communications facilities. 47 C.F.R. §§ 90.35 - 90.51.

[3] Petition for Rule Making, Commercial Enterprises in the SERS, RM-5662 (December 5, 1986).

[4] Eligibility in the medical services category encompasses specific types of hospitals, organizations regularly engaged in providing medical services through clinics and public health facilities, ambulance companies, rescue organizations to the extent that they provide medical services, physicians, schools of medicine, oral surgeons, associations of the above groups, governmental agencies engaged in their own medical activities, and governmental agencies providing medical services communications. 47 C.F.R. § 90.35(a).

[5] The primary uses of each MED channel are quite specific. MED channels 1, 2, and 3 are reserved primarily for biomedical telemetry. 47 C.F.R. § 90.53(b)(19). MED channels 4, 5, 6, 7, and 8 are reserved for "communications between medical facilities vehicles and personnel related to medical supervision and instruction for the treatment and transport of patients in the rendition or delivery of medical services." 47 C.F.R. § 90.53 (b)(20); *Cf.* Report and Order, Docket No. 19576, 47 FCC 2d 676 (1974) (establishing present medical services category and uses of MED channels 1-8). The primary uses of MED channels 9 and 10 are the "dispatch of medical care vehicles and personnel for the rendition or delivery of medical services." 47 C.F.R. § 90.53(b)(16); *Cf.* Report and Order, Docket 81-416, 49 Fed. Reg. 4494 (February 7, 1984), 55 RR 2d 419 (establishing MED channels 9 and 10). To use the MED channels one must meet the eligiblity requirements of the medical services category as set forth in Section 90.35(a) of the Commission's rules.

[6] The frequencies are 155.325, 155.340, 155.355, 155.385, and 155.400 MHz. 47 C.F.R. § 90.53(a), (b)(9), and (b)(10).

[7] *See* Report and Order, Frequency Coordination in the Private Land Mobile Radio Services, PR Docket No. 83-737, 103 F.C.C. 2d 1093 (1986).

[8] A complete list of parties who filed comments and reply comments is attached as Appendix A to this Report and Order. Some of these comments were filed late. We will accept the late comments so that we may consider as many views as possible.

[9] Unless the private carrier is itself a member of one of the ten classes of present eligible users, it cannot use SERS frequencies for its own end user communications needs. The Rules will only permit private carriers to use the frequencies for testing, system maintenance, and similar uses necessary to provide a service for SERS eligibles. *See* 47 C.F.R. § 90.405(a)(2)-(3).

[10] Paging of any kind is prohibited on MED channels 1 through 8 and the VHF medical frequency at 155.340 MHz. *See* 47 C.F.R. §§ 90.55, 90.53(a) and (b)(15)(i). Paging limited to alerting ambulance personnel and rescue squads is permitted on MED channels 9 and 10 and on the remaining four VHF medical frequencies but only on a secondary non-interference basis to the primary uses of those channels. *See* 47 C.F.R. §§ 90.55, 90.53(a) and (b)(16).

[11] The certified coordinator for the SERS spectrum would recommend available frequencies. Coordination responsibilities for the SERS are handled jointly by the International Municipal Signal Association, Inc. (IMSA), the International Association of Fire Chiefs, Inc. (IAFC), and the National Association of Business and Educational Radio, Inc. (NABER).

[12] Private carriers will not be permitted to operate on this new spectrum or other spectrum in the Public Safety Pool at 800 MHz and above. We never intended the item to apply to 800 and 900 MHz frequencies because SERS eligibles share this spectrum with other groups of users not contemplated in the Petition for Rule Making or in the *Notice*. As we stated in our recent decision amending Subparts M and S of Part 90, private carriers may operate only in commercial pools at 800 MHz and above. *See Report and Order*, Amendment of Part 90, Subparts M and S, 3 FCC Rcd 1838, 1849 (1988).

[13] We do not expect that any licensee, including a private carrier licensee, would intentionally break into a MED channel primary communication to transmit a secondary communication. Such a licensee would be violating the Commission's Rules and would be subject to sanctions.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

DE RIDDER MOBILE FONE, INC. File No. 25213-CD-P/L-01-87

For authority to construct and operate a one-way facility on frequency 152.84 MHz at De Ridder, Louisiana

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1988; Released: June 10, 1988

By the Chief, Mobile Services Division:

1. Cameron Telephone Company, Inc. (Cameron) has filed a petition to dismiss or deny the captioned application of De Ridder Mobile Fone, Inc. (De Ridder). De Ridder seeks authority to construct and operate a new one-way facility to operate on frequency 152.84 MHz at De Ridder, Louisiana. De Ridder has filed an opposition to the petition and Cameron has filed a reply.

BACKGROUND

2. De Ridder filed an application for a new one-way facility to operate on frequency 152.84 MHz at Rosepine, Louisiana, on February 4, 1987,[1] and Cameron filed an application for a new one-way facility to operate on frequency 152.84 MHz at Pickering, Louisiana on April 14, 1987.[2] The Commission subsequently listed the Rosepine and Pickering applications as potentially being mutually exclusive. [3] In the same public notice, (dated 7/29/87), the Commission listed as accepted for filing the captioned De Ridder application.[4]

CONTENTIONS OF THE PARTIES

3. Cameron contends that the captioned De Ridder application is mutually exclusive with the earlier-filed Cameron application and that because De Ridder's application was filed after the 60-day cut-off period specified by Section 22.31(b) of the Commission's Rules and started by the original De Ridder application, the captioned application was untimely filed. Cameron asserts that although De Ridder's captioned application was not previously returned and appeared on public notice as acceptable for filing, that it is still defective and should be returned. Cameron alternatively argues that the captioned application should be returned as defective because it did not contain the required Section 22.15(b)(2) showing demonstrating that its proposed facility would not cause harmful interference to proposed facilities within a 67-mile radius. In particular, the captioned application did not list Cameron's proposed station as a co-channel facility (the proposed De Ridder site being 21.4 miles from Cameron's proposed Pickering site) and did not show non-interference to Cameron's proposed facility. Thus, Cameron asserts that dismissal of the De Ridder application is warranted under Section 22.20(a).

4. In its opposition, De Ridder argues that even if its captioned application were withdrawn or dismissed, Cameron's Pickering application still could not be granted because it is mutually exclusive with De Ridder's Rosepine application. Thus, according to De Ridder, whether or not the captioned application is pending is immaterial to the issue of whether Cameron's application could be granted. Moreover, De Ridder argues that since its Rosepine application was not protested and contained no defects, the captioned application and Cameron's application must go to lottery. According to De Ridder, if its application were now dismissed and it had re-filed later "after De Ridder defeats Cameron in the lottery" delays service to the public would result. As to the lack of the technical information, De Ridder says requiring a study would serve no useful purpose since the parties concede that its captioned application is mutually exclusive with Cameron's application but requests a waiver of Sections 22.15(b) and 22.31 in order to allow its captioned application to remain on file. De Ridder also asserts that having its captioned application remain on file pending lottery would neither create adverse precedent nor undermine the Commission's so-called "A-B-C Rule".

DISCUSSION

5. After careful consideration of the facts and arguments presented, we conclude that the captioned De Ridder application is defective and De Ridder has failed to justify acceptance of its application or a grant of a waiver of the required technical contents and the "cut-off" provisions of the Commission's Rules.

6. There is no dispute that De Ridder's Rosepine and Cameron's Pickering applications are mutually exclusive and De Ridder does not dispute the fact. Consequently, Section 22.31(c) is applicable and states in pertinent part:

> "Whenever three or more applications are mutually exclusive, but not uniformly so, the earliest filed application establishes the date prescribed in [Sec. 22.31](b)(2), regardless of whether or not subsequently filed applications are directly mutually exclusive with the first filed application."

The cut-off period established by the first filed mutually-exclusive application applies to all mutually-exclusive filings, including additional Facilities proposed by the original applicant. *See Berks County Communications, Inc.*, Mimeo No. 4435, released June 8, 1982. Thus, the 60-day cut-off period set forth in Section 22.31(b)(2)(i) began when De Ridder's Rosepine application appeared on public notice on February 18, 1987, and ended on April 20, 1987. Therefore, since the captioned application was filed on July 16, 1987, almost three months after the established cut-off date, it was untimely filed, is defective, and must be dismissed.[5]

7. In light of the foregoing, we find that De Ridder's captioned application was untimely filed, is defective, and should be returned as defective.

ORDERING PARAGRAPHS

8. Accordingly, IT IS ORDERED that the Petition to Dismiss or Deny filed by Cameron Telephone Company, Inc. IS GRANTED.

9. IT IS FURTHER ORDERED that the application filed by De Ridder Mobile Fone, Inc., File No. 25213-CD-P/L-01-87, IS DISMISSED WITHOUT PREJUDICE pursuant to Section 22.31(d) of the Commission's Rules and IS BEING RETURNED.

10. This order is issued under Section 0.291 of the Commission's Rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] *See* File No. 22117-CD-P/L-01-87, which appeared on Public Notice, Rpt. No. PMS-87-21, Mimeo No. 1947, released Feb. 18, 1987, at 3.

[2] *See* File No. 23890-CD-P/L-01-87, which appeared on Public Notice, Rpt. No. PMS-87-31, Mimeo No. 2955, released Apr. 29, 1987, at 2.

[3] *See* Public Notice, Rpt. No. PMS-87-44, Mimeo No. 4213, released July 29, 1987, at 7.

[4] *Id.* at 5.

[5] Additionally, De Ridder's request for waiver does not comply with the requirements of Section 22.19 of the Commission's Rules and is therefore dismissed.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

PACIFIC BELL File No. 23999-CD-P/L-01-87

For a construction permit for a new one-way station to operate on frequency 158.10 MHz in the Public Land Mobile Service near Chualar and Monterey, CA

CONTINENTAL TELEPHONE COMPANY OF CALIFORNIA File No. 22693-CD-P/ML-01-87

For authority to construct additional facilities to operate on frequency 158.10 MHz in the Public Land Mobile Service at Mt. Chual, near San Jose, CA

MEMORANDUM OPINION AND ORDER

Adopted: June 3, 1988; Released: June 10, 198

By the Chief, Mobile Services Division:

1. Continental Telephone Company of California (Contel), pursuant to Section 1.41 of the Commission's rules, filed an informal objection to the above-referenced application of Pacific Bell (Pacific). Pacific filed an opposition and Contel has replied.

BACKGROUND

2. On December 23, 1986, Pacific filed an application for a new facility at Watsonville, California (21420-CD-P/L-01-87). Within 60 days of the public notice of this filing, Contel submitted a mutually exclusive application for additional 158.10 MHz facilities for Public Land Mobile Service (PLMS) Station WXR974 at Mt. Chual, near San Jose, California. Contel filed a petition to deny Pacific's application. On March 11, 1987, Pacific withdrew its application without prejudice. On April 13, 1987, Pacific filed the above-captioned application. By lottery notice dated September 28, 1987, the captioned applications of Pacific and Contel were set for lottery. The lottery was held and Pacific was announced the lottery winner.[1]

3. In its objection, Contel maintains that the application initially filed by Pacific commenced the 60-day cut-off period, prescribed by Section 22.31(b) of the rules, within which any mutually exclusive application had to be submitted. According to Contel, the last date or cut-off date for filing applications mutually exclusive with the proposals of either Pacific or Contel was March 9, 1987. Contel argues that because Pacific's latter filed application was filed outside the cut-off deadline, it should be dismissed as defective pursuant to Section 22.20(b)(7). Contel contends that the operation of the cut-off rule in this case is not changed where the offending application was filed by the applicant who commenced the cut-off period or where the first application was subsequently dismissed.[2]

4. In addition, Contel challenges the signature on Pacific's application, asserting that Pacific failed to submit a showing that "F.H. Schott, District Manager" was a duly authorized employee at the time he executed the application. Contel contends that the application should be dismissed because it was not properly signed.

5. Pacific distinguishes this case from those cited by Contel. In those cases, Pacific contends, the cut-off period was established by applications filed and returned to applicants by the Commission. Here, Pacific's application was voluntarily withdrawn. Pacific believes that applicants should not be "dissuaded from voluntarily withdrawing applications within a reasonable period of determining that they should be recalled" and that any other result would not be in the public interest. [3]

6. Pacific also argues that its application was properly signed by a duly authorized employee of Pacific as required by Section 1.743(a) of the Commission's rules. Pacific contends that there is no requirement for the submission of evidence with an application concerning the authority of the person who signed the application and confirms that Mr. Schott had the requisite authority to sign the document.

DISCUSSION

7. At the time Contel filed its application, there is no question that the deadline for filing applications mutually exclusive with Pacific's first application was March 9, 1987. By letter dated, March 11, 1987, Pacific requested dismissal of its application. This request came after the end of the 60 day period, by which the public was put on notice that any future mutually exclusive filings were cut-off. When that date passed, Pacific and Contel were the only mutually exclusive applicants and were entitled to protection from further mutually exclusive filings. That status did not change when, over one month after the cut-off date, Pacific filed the captioned application. The fact that Pacific withdrew its application after the established cut-off date does not operate to change Contel's protected status. It is well established that only timely filed mutually exclusive applications are entitled to consolidated consideration. *See Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945). Whether an application is timely or not must be determined as of the time of filing, not by an event occurring after the cut-off date. *See King Communications, Inc.* Mimeo No. 5099, released June 11, 1986.[4]

8. Having determined that Pacific's application was untimely filed, we find that the acceptance of Pacific's captioned application and its inclusion in the lottery with Contel's application in a lottery were errors. Therefore, we dismiss Pacific's application and grant the application of Contel.[5]

9. Accordingly, IT IS ORDERED That the application filed by Pacific Bell, File No. 23999-CD-P/L-87, IS DISMISSED AS UNTIMELY FILED.

10. IT IS FURTHER ORDERED that the application of Continental Telephone Company of California, File No. 22693-CD-P/ML-1-87, IS GRANTED.

11. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 may be filed within 30 days of the date of public notice of this order. (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Kevin Kelley,
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Pacific has not been issued authorization to operate pending the outcome of this proceeding.

[2] In support of its position, Contel cites *William G. Bowles, Jr. d/b/a Mid-Missouri Mobilfone*, Mimeo 6385, released April 19, 1986, in which the Bureau stated, "The subsequent dismissal of the first-filed application does not alter the applicable cut-off period." Contel also cites *Berks County Communications, Inc.*, Mimeo No. 4435, released June 8, 1982.

[3] Pacific maintains that Contel's objection is untimely and should be dismissed. Pacific states that the Commission no longer allows parties to file informal objections to applications after the thirty day period established in Section 22.30 expires and that informal pleadings are available only in situations where formal procedures are not required, as they are here. While we do not condone late-filed objections, we recognize that the Commission may, under the public interest standard, consider such objections before acting on applications. *See* Revision and Update of Part 22 of the Public Mobile Radio Service Rules, 101 FCC 2d 799 (1985).

[4] An important purpose for adopting the predecessor of the current Section! 22.31(c) was to avoid the establishment of successive cut-off dates. *See* Application for Common Carrier Facilities, 13 FCC 2d 415, 416 (1968).

[5] Because of our decision to dismiss Pacific's application, we do not address the issue of whether Pacific's application was properly signed.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-287

In the Matter of

SOUTHWESTERN BELL TELEPHONE COMPANY — Transmittal No. 1629

Revisions to Tariff
F.C.C. No. 68

MEMORANDUM OPINION AND ORDER

Adopted: June 2, 1988; Released: June 3, 1988

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On March 7, 1988, Southwestern Bell Telephone Company (SWB) filed Transmittal No. 1629, proposing to modify its existing tariff provisions relating to the provision of Feature Group D (FGD) connections. SWB proposes to deploy the equal access technologies of the Digitech EAS 20/20 (Digitech) and Northern Telecom LATA Equal Access System (LEAS) as alternatives to the replacement of certain electromechanical switches with new electronic switches.[1] The scheduled effective date for Transmittal No. 1629 is June 5, 1988. In this Order we suspend Transmittal No. 1629 for five months and designate issues for investigation.

II. BACKGROUND

2. SWB states that implementation of the Digitech and LEAS technologies provides cost-effective alternatives to the replacement of non-conforming electromechanical switches with electronic switches in the provision of FGD service.[2] SWB asserts that the Department of Justice (DOJ) has recognized the difficulty and expense of replacing switches, and has encouraged the Bell Operating Companies (BOCs) to consider the use of alternate technologies to accelerate the implementation of equal access at a lower cost. [3] The proposed alternative technologies provide, according to SWB, all of the basic functions and features of equal access, except that direct trunking is not available with LEAS.[4] In defense of the LEAS system, SWB asserts that 95 percent of its step-by-step end offices have 5,000 lines or less, and 80 percent have 3,000 or less. According to SWB, carriers rarely order trunks to offices of this size in order to avoid trunking inefficiencies, and all trunking to these offices is tandem routed for AMA recording purposes. SWB D&J at 4-5.

3. SWB states that these alternative systems were deployed on a trial basis. The LEAS software deployment and trial was executed in three stages – by test calls through a Northern Telecom switch in the test lab, test calls made at the installation test site, and user trials in which four interexchange carriers (ICs) participated.[5] Each of the participating ICs obtained feedback from their customers, and MCI Telecommunications Corporation (MCI) and American Telephone and Telephone Company (AT&T) conducted tests of their own on the LEAS system. SWB took complaint comments from each of the ICs and conducted its own phone survey of the end users.[6]

4. SWB asserts that all of the participant ICs and end users were satisfied with the test, although SWB notes that MCI thought that implementation of LEAS should be limited to small offices because of excessive post-dial delays detected during MCI's testing. *Id.* at 7-9. SWB found that the LEAS system allows AMA tapes to be processed through SWB's IC billing system, and asserts that the end user trial and its own telephone survey "verified the acceptability of LEAS in providing Equal Access service from an end user's perspective." *Id.* at 9.

5. The Digitech trial deployment consisted of an internal evaluation of the system by SWB, and a "friendly user trial."[7] SWB reports that none of the ICs reported any difficulties or end user dissatisfaction, and that a survey of MCI's end users demonstrated a "high level of satisfaction." *Id.* at 11. As a result of a telephone survey conducted by SWB, three negative reports were received that SWB determined had no relation to the Digitech system, and two negative reports were received that did relate to the system, but were input erors corrected at the beginning of the trial.[8]

6. According to SWB, evidence concerning tested alternate technologies does not support a finding of unreasonable post-dial delay and the finding of no customer dissatisfaction in the end user trials supports the reasonableness of any delay. SWB admits that end users cannot distinguish between the post-dial delay caused by SWB and that caused by an IC. Post-dial delay is also affected by IC's requests for Automatic Number Identification (ANI), tandem versus direct connection, and the use of touch tone versus rotary phones. SWB asserts that the DOJ found that post-dial delay is increased to some extent even by replacement with electronic switches, and that the post-dial delay resulting from alternate technologies is the same for all ICs, including AT&T. SWB states that the DOJ found that a customer's attribution of increased time to the ICs would not demonstrate a BOC failure to provide equal access within the guidelines of the Modification of Final Judgement (MFJ). *Id.* at 12-14.

III. SUMMARY OF PETITIONS

7. On March 22, 1988, ALC Communications Corporation (ALC) filed an emergency petition to reject, or in the alternative, to suspend and investigate, and MCI filed a petition to suspend and investigate the tariff transmittal. Both petitioners state that the alternate technologies proposed by SWB do not constitute equal access pursuant to the MFJ, are unreasonably discriminatory, and do not provide equal access under the Commission's rules.[9] They assert that deployment of these alternate technologies is unjust and unreasonable because it degrades service from that which was available before conversion.[10] Since the significant post-dial delays make this service less than equal access, concludes MCI, SWB should not be allowed to charge full premium rates. MCI Petition at 2-3 & 6-7. ALC further contends that this additional delay has a significant impact on the ICs, possibly resulting in the loss of customers, especially in light of a Bell Laboratories

report in 1978 that found increases in post-dial delays increasing customer disconnects by up to 25 percent. ALC Petition at 6.

8. The petitioners assert that SWB avoids the issue of post-dial delay, and that the surveys used by SWB to buttress its arguments are of questionable validity due to poor documentation and invalid sample sizes and techniques. *Id.* at 7-8. MCI objects to the lack of testing of the Digitech equipment, and the dearth of comparisons between calls placed over FGD electronic switches and alternate technologies. MCI also asserts that the limited testing afforded the ICs differs substantially from actual open market usage, and is not a reliable indicator of actual customer satisfaction. MCI Petition at 3-6. Furthermore, both petitioners assert that SWB should be required to provide a detailed cost/benefit analysis justifying the use of alternative arrangements. ALC Petition at 7-8, MCI Petition at 6-7. ALC contends that this analysis should include a discussion of scheduled switch replacements for a ten year period and incorporation of the increased expenses incurred by ICs to overcome the post-dial delay problem. ALC Petition at 7-8.

9. In addition, ALC argues that the Commission should rule on ALC's Emergency Petition prior to ruling on this transmittal. ALC asserts that a fine should be assessed on SWB for deployment of these technologies before filing with the Commission. ALC claims this is a material fact that SWB failed to disclose.[11] ALC also notes that although SWB relies heavily on the DOJ Report, the MFJ Court has not ruled on these issues, and the Commission has not ruled on related issues. ALC Petition at 3.

10. In its reply, SWB challenges the petitioners' assertions regarding the quality of these technologies as based upon inaccurate and insufficient information, characterizes the DOJ Report as rejecting similiar arguments of the petitioners as insufficient, and states that SWB's own assertions provide convincing evidence of the quality of these technologies.[12] Furthermore, the action of the Bureau allowing US West to provide alternate equal access based on reports of 2-3 second delays is alleged by SWB to be sufficient to allow these tariff provisions to become effective because SWB's test results are generally consistent with US West's.[13] SWB asserts that there is no reason to burden the ratepayers with the additional cost of switch replacement when these technologies provide the functional equivalent of equal access, and allow for the accelerated provision of equal access.[14]

11. SWB asserts that these technologies meet the requirements for the billing of equal access since AT&T is the traditional provider of MTS/WATS under the interstate access rules, and the quality of service for all ICs is identical to AT&T's when the alternate technologies are used. In response to ALC's allegation that SWB is not providing equal access because the service is not equivalent to the BOCs' for intraLATA interstate traffic, SWB asserts that the MFJ Court, all five states in SWB's region, and the Commission have approved of SWB remaining the 1+ intraLATA carrier. Where intraLATA competition is permitted, SWB continues, it is done on a 10XXX basis for the competing carriers. Therefore, concludes SWB, since only SWB is entitled to 1+ intraLATA carriage, ICs' and SWB's access need not be equivalent.[15]

12. SWB asserts that because its proposed tariff changes do not relate to a new service or affect existing rates or service, no economic information or cost/benefit analyses are required. SWB Reply at i, 16. Further, SWB states that the deployment of these technologies is a network provisioning decision in which the Commission has not participated in the past, and that the Commission should not do so here. *Id.* at 2. SWB declares that there is no basis for the imposition of fines. SWB acknowledges that it has been providing equal access to all interexchange carriers in the 25 offices where installation of alternate technologies has been completed.[16] SWB defends these tariff changes as administrative in nature, and reflecting minor changes necessary to make its tariffs "crystal clear." *Id.* at 17-18. SWB states that it has not acted in violation of Section 203 of the Act, but rather has acted in accord with the MFJ and MCI's requests for equal access. Therefore, SWB concludes, ICs should pay FGD rates, regardless of the technology used.

IV. DISCUSSION

13. In a recent order, this Bureau denied petitions to reject, suspend or investigate a US West tariff transmittal which also proposed to use alternative technologies to provide equal access capabilities.[17] US West represented that the post-dial delay caused by these technologies was in the range of 2-3 seconds. The *US West Order*, however, imposed specific reporting requirements to monitor post-dial delay times through valid sampling, and stated that significant deviations from the 2-3 second time may require further Commission action. *Id.*

14. Although SWB submits that the delays caused by its technologies are "generally consistent" with those of US West, this is not apparent on the face of SWB's filing.[18] In addition, the DOJ Report, relying on times provided by NYNEX, Bell Communications Research, and SWB, indicates that the total delay time for Digitech is 7.2 seconds, and for LEAS is 8.5 seconds. The incremental increase in time over previous service then appears to be a minimum of 3.7 seconds for LEAS and 4.2 seconds for Digitech. The incremental increase compared to replaced switches with direct trunking appears to be 5.2 seconds for Digitech and 6.5 seconds for LEAS, as compared to SWB's intended architecture. *See* DOJ Report at 45-48, Tables I and II.

15. Based on our review of Transmittal No. 1629, the information submitted regarding post-dial delay is incomplete, especially with respect to the Digitech system, does not satisfy the informational requirements recommended by DOJ in its report, and does not provide the information that the *US West Order* will require US West to provide. Moreover, the available evidence regarding post-dial delay indicates greater delay time than SWB claims. Other studies indicate that excessive delays can cause an increase in customer disconnects, which may be harmful to the ICs.[19] Also, SWB's survey information regarding customer acceptance of post-dial delay is based on undocumented and questionable statistical methods. The survey is therefore insufficient to establish the reasonableness of the post-dial delay that would result from SWB's use of these technologies. Further, customer surveys of the type undertaken by SWB may not be dispositive, in any event, of the question of acceptable delay levels. Even though the delay caused by a particular alternative technology may not in itself be perceived as harmful, delays should ultimately be viewed as cumulative on an end-to-end network basis so that the level of individual increments can be carefully scrutinized and minimized wherever possible. Delays of a few seconds added to a fairly long total

network delay, as opposed to an overall short network delay, could have a more substantial impact on end user perception of an IC's quality of service and abandonment because of customer tolerance for total delay times. Accordingly, an investigation is warranted to determine the amount of post-dial delay associated with the Digitech and LEAS technologies, and to determine whether such post-dial delay is so excessive that the introduction of these technologies should be described as an unreasonable practice that violates the Communications Act.

16. SWB has apparently mischaracterized the findings and conclusions of DOJ. Although DOJ generally endorses the use of alternative technologies as a cost saving method of accelerating the provision of equal access, it concludes that the issue of acceptable post-dial delay times is properly addressed by the Commission, as it is a regulatory matter. Moreover, DOJ embraces cost/benefit comparisons in the evaluation of alternative technologies, and SWB provides little or no information of this kind. In our investigation, we will require SWB to supply cost/benefit comparisons of the Digitech and LEAS technologies and the available alternatives.

17. That cost/benefit assessment should include an assessment of the costs and benefits of alternative means of providing equal access capabilities. SWB indicates that the deployment of these alternate technologies will be a permanent substitute for the conversion of these offices to full electronic equipment. Use of these technologies on a permanent basis could deprive the end users served in those areas of the benefits of custom calling services, integrated services digital network, enhanced interLATA and intraLATA communications, and other new and innovative services offered by both local exchange and interexchange carriers. The provision of telecommunications service to a community can often substantially impact its future business growth. Therefore, we will also investigate issues related to the long term effects of the placement of these technologies in certain areas, and the impact of forgoing future switch replacement.

18. Finally, we have previously rejected the notion that intraLATA interstate traffic is specifically reserved for the local exchange carrier. In recent cases involving the GTE Telephone Operating Companies (GTOC), the Commission specifically ordered GTOC to remove requirements from its tariffs that all 1+ intraLATA traffic be routed to GTOC.[20] In the instant transmittal, SWB has misstated its right to carry 1+ intraLATA interstate traffic. The provision of access to itself for interstate services that is substantially better than that provided other carriers may be discriminatory in violation of the Act. Therefore, we will also investigate issues related to discrimination in the provision of intraLATA interstate access.

V. DESIGNATION OF ISSUES TO BE INVESTIGATED

19. Accordingly, we direct SWB to provide more detailed information regarding the amount of post-dial delay experienced by users in order to demonstrate that the introduction of these technologies is not an unreasonable practice. SWB is directed to respond in its direct case to the following request for information:

(1) SWB should provide a detailed analysis of the various individual components of post-dial delay, identified both by cause and by smallest individual increment, including but not limited to contributions by the end office, access tandem, alternative technology, overlap outpulsing (or lack thereof) and ANI, for both the originating and terminating ends of a call.

(2) For each of the components identified above, SWB should provide a time-stamped and detailed comparison of the post-dial delay experienced by an end user for calls completed through each relevant architecture (Feature Group B and Feature Group C) used prior to conversion, after conversion to an electronically equipped Feature Group D office, and after conversion with each of the alternative technologies proposed to be used by SWB, for both the originating and terminating ends of a call. The information provided should be expressed in terms of absolute delay times, as well as incremental delay times, and should be based on statistically valid sampling techniques when statistical studies are warranted. The report should contain a detailed explanation of the manner in which post-dial delay was measured, including all assumptions used, and the manner in which the sample of end offices was selected.

(3) SWB should explain in detail all deviations from the times reported in the DOJ Report, explain the reasons for the differences, and identify the components causing the differences.

20. We further direct SWB to provide information on the probable effect of post-dial delay on end users and ICs, including a discussion of the 1975 Bell Laboratories Report cited in note 19, *supra*, and the impact of that report's conclusions on end users and the ICs. In addition, SWB is directed to respond to the following questions:

(1) What are acceptable overall post-dial delay times, and what criteria should the Commission use in determining an acceptable level for overall post-dial delay?

(2) What steps are being taken to minimize post-dial delay in the network, and how does the use of alternative technologies impact these efforts?

(3) What studies are available concerning network delays and their impact upon end users, on competition among ICs, and the tolerance and sensitivity of end users to additional increments of post-dial delay? Provide copies of any studies cited.

21. In order to assess the comparative costs and benefits of the alternative technologies, SWB should provide the following information:

(1) SWB should identify the offices chosen for the use of these technologies, including detailed information on the process for choosing these offices, and should include the criteria used for selection of the offices for conversion.

(2) SWB should further identify offices of like size and other characteristics which are not fitted with the alternate technologies, but instead are refitted with new electronic switches, and should discuss the reasons why such offices were completely replaced.

(3) SWB should also include an analysis of the costs and benefits of using the alternate technologies. Such analysis should include an identification of the time that each office had previously been scheduled for full conversion, calculation of the net present value savings of not converting such offices, and identification of when such offices may be converted in the future. The cost/benefit analysis should include: the costs of increased labor and maintenance associated with the use of retrofitted older switches as opposed to switch replacement; the costs of the technological deprivation of customers; the costs of additional noise and delays experienced due to failure to replace the older switches, including the cost of equipment needed to attenuate the problems of noise and delay; and any other short- or long-term costs associated with compensating for the overall lower quality of the network where switches are not replaced.

22. We further direct SWB to provide information regarding the long-term impact on the communities in which alternate technologies will be used, including the following:

(1) The impact of services that will not be available to communities where alternative technologies are employed.

(2) The probable impact on the growth and business development of such communities.

(3) The costs likely to be incurred by end users and ICs in these communities due to the lack of full electronic switch capability.

(4) The efforts contemplated by SWB to alleviate any of the difficulties or disadvantages discussed herein.

23. Finally, we direct SWB to demonstrate in its direct case why the provision of access to ICs with substantially longer post-dial delay times than those experienced by SWB in the provision of interstate services does not constitute discrimination under Section 202(a) of the Act. In addition, SWB should address the following:

(1) SWB should identify the differences in delay times, by the individual components identified above, between intraLATA calls placed over its own network and calls placed over an IC's network through an alternative technology.

(2) SWB should explain why these differences in services do not constitute discrimination or should not be considered to be unreasonably discriminatory.

VI. PROCEDURAL REQUIREMENTS

24. This investigation will be conducted as a notice and comment proceeding to which the procedures set forth in this Order shall apply. Accordingly, we require SWB no later than July 5, 1988 to file a direct case addressing the issues outlined above. In its direct case, SWB must answer each specific question listed in Section V, *supra*. Moreover, the direct case must supply all information upon which SWB relies to support its position. Pleadings opposing the direct case may be filed by interested parties no later than **July 25, 1988** and must be captioned "Opposition to Direct Case" or "Comments on Direct Case." SWB may file a "Rebuttal" to oppositions and comments no later than August 4, 1988. All oppositions, comments, and SWB's rebuttal must also be organized to reflect the issues designated in this Order.

25. An original and seven copies of all pleadings shall be filed with the Acting Secretary of the Commission. In addition, one copy shall be delivered to the Commisison's commercial copying firm, International Transcription Service, Inc. (ITS), Room 246, 1919 M Street, N.W., Washington, D.C. 20554.

26. *Ex parte* contacts (i.e., written or oral communications which address either the procedural or substantive merits of the proceeding which are directed to any member, officer, or employee of the Commission who may reasonably be expected to be involved in the decisional process in this proceeding) are permitted in this proceeding until a public notice of a Commission consideration of a final Order is released and after the final Order itself is issued. Written *ex parte* contacts must be filed, on the same day submitted, with the Acting Secretary for inclusion in the public file. A written summary of oral *ex parte* presentations must be served, on the same day presented, on the Acting Secretary and Commission employees receiving each presentation. For other requirements, *see generally* Section 1.1200 *et seq.* of the Commission's Rules, 47 C.F.R. § 1.1200 *et seq.*

VII. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. §204(a), that the revisions to Tariff F.C.C. No. 68, provision of equal access through alternate technologies, proposed by Southwestern Bell Telephone Company in Transmittal No. 1629 ARE SUSPENDED for five months from the present scheduled effective date.

28. IT IS FURTHER ORDERED pursuant to Sections 204(a) of the Communications Act, that an INVESTIGATION IS INSTITUTED concerning the issues set forth herein.

29. IT IS FURTHER ORDERED, pursuant to Sections 4(i), 4(j), 201(b), 203(c), 204(a), and 205 of the Communications Act that the issues set forth in Section V, *supra*, ARE DESIGNATED FOR INVESTIGATION.

30. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall issue a supplement no later than **June 10, 1988,** indicating that the proposed tariff revisions ARE SUSPENDED. For this purpose, Special Permission No. 88-256 is assigned.

31. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company shall be a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] SWB states that it initially intends to install the Digitech system in 11 crossbar offices in Arkansas, Kansas, and Texas. LEAS will be initially deployed in three DMS-300 tandem offices in Kansas, providing equal access connections to 15 step-by-step offices. SWB Description and Justification (D&J) at 3.

[2] According to SWB, these technologies assist in interexchange carrier (IC) traffic recognition and routing. LEAS is a software program that is added to the Northern Telecom DMS-200 tandem switch used for processing IC traffic from electromechanical switches, and Digitech is an adjunct system for providing equal access capabilities to No. 5 Crossbar end office switches. *Id.* at 3.

[3] *Id.* at 2-3 (citing Final Report of the United States Concerning BOC Schedules for Providing Equal Access in Response to MCI's Requests and Memorandum in Support of Motion for an Enforcement Order Requiring NYNEX to Accelerate Its Provision of Equal Access, Jan. 29, 1988) (DOJ Report).

[4] Features provided include dialing parity, rotary dial access, automatic number identification, answer supervision, carrier access code, directory assistance service capability, testing and maintenance, Automatic Message Accounting (AMA) capabilities, and presubscription. SWB D&J at 4.

[5] Participating ICs were Compute-A-Call, MCI, AT&T, and US Sprint. The total number of end users was 61; 50 of them were AT&T customers. *Id.* at 6.

[6] SWB's phone survey consisted of contacting a total of 61 end users. SWB states that only three negative comments were received. These complaints were determined by SWB to not be related to the trials. *Id.* at 7-9. No information is provided by which the validity of the surveys can be judged.

[7] Three ICs participated in the trial with a total of 38 users, 29 of whom were AT&T customers. The end users were selected by the participating ICs. *Id.* at 10.

[8] *Id.* at 11-12. This survey suffers from the same deficiencies as the first. *See* , *supra*, note 6.

[9] MCI Petition at 2-3. ALC contends that imposition of additional post-dial delay on the intralata calls of non-BOCs, and the inability of ICs to receive intraLATA 1+ calls when alternate technologies are used, are discriminatory. According to ALC, 47 C.F.R. § 69.205(a) defines equal access as access equal in type and quality to the interstate provider. Since SWB is the interstate intraLATA carrier, ALC claims that the use of the alternate technologies violate the Commission's rules. ALC Petition at 8-9. ALC also contends that the MFJ requires the same access as the BOCs on intraLATA traffic, except for presubscription. *Id.* at 4-5.

[10] MCI Petition at 2. ALC notes that post-dial delay increases by 3.7 seconds after conversion. ALC Petition at 6 & n.15 (quoting DOJ Report at Tables I and II).

[11] *Id.* at 1-2. ALC asserts SWB misled the Commission by stating that it intended to implement these technologies, when it had already installed these technologies and charged premium access. ALC calculates fines pursuant to Section 203(e) of the Communications Act of 1934, 47 U.S.C. § 203(e) (Act), in the amount of41 million plus2 million per day from the date of deployment to the date the tariffs become effective or premium charges are discontinued. *Id.* at 9-10. We are not designating questions relating to the lawfulness of past and present conduct as issues in this Section 204 investigation because such questions appear to be beyond the scope of a Section 204 proceeding. We may, however, initiate other proceedings at a later date.

[12] SWB Reply at 4-5 & n.6. SWB asserts that these technologies meet an "end user perception test" since no customer complaints "regarding post-dial delay" were received during or after the end-user trials. The assertion that a customer would "discern an additional 1.5 to 3 second delay," and then change ICs, is unbelievable according to SWB. Since an end user cannot distinguish among the various components of post-dial delay, SWB concludes that any examination of the effect of delay on ICs must consider the portion of delay attributable to ICs. *Id.* at 5-6 & n.6.

[13] *See* para. 13-15, *infra*.

[14] SWB Reply at 6-9. Justifying its decision, SWB estimates that switch replacement cost per line is557.00 for a step-by-step switch and 526.00 for a crossbar switch, as compared to a range of 60.00 to 129.00 for the alternate technologies. *Id.* at 8 n.13. These comparisons, however, do not include any of the considerations deemed important by the DOJ or the petitioners.

[15] In response to ALC's suggestion that *all* traffic should be routed through the alternate technologies in order to make access equal, SWB asserts that such rerouting would only waste switch time and programming space. SWB states that since its calls are automatically routed through SWB's switches without the need for carrier look-up and ANI, the features of these technologies are not required. SWB admits that such automatic routing results in reduced delay times for its calls, but believes this is not discriminatory because of SWB's preferred status. *Id.* at 12-16.

[16] SWB use of these technologies has been common knowledge in the industry "since early 1987" (*id.* at 2 n.2.), states SWB, and a six-month notice of office conversion "included the indication that these offices would be converted without switch replacement." *Id.* at 3 n.3.

[17] Alternative Equal Access Arrangements, Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company, and Pacific Northwest Bell Telephone Company, Transmittal No. 104, DA 87-1887, released Dec. 29, 1987, at 3 (*US West Order).*

[18] It is not clear that the delays caused by the Digitech and LEAS systems were within the US West times. For example, SWB states that Digitech adds approximately 1.5 seconds to existing delay "due to overhead time." SWB Reply at 7. It is unclear, however, whether this is in addition to other delays caused by the Digitech system, or in addition to the comparative delay caused by the LEAS system.

[19] *See, e.g.*, Duffy & Mercer, *A Study of Network Performance and Customer* Behavior During Direct-Distance-Dialing Call Attempts in the U.S.A., 57 The Bell System Tech. J. 1, 15 & Fig. 8 (1978). That study suggested that end users may abandon a call within 15.5 seconds of no system response. An end user switching from a traditional carrier with little or no post-dial delay to a "new" carrier, and thereafter experiencing more substantial post-dial delay, may attribute all of the additional post-dial delay to the new carrier and return to a traditional carrier.

[20] GTE Telephone Operating Companies, 2 FCC Rcd 3345, 3346 (1987); and GTE Telephone Operating Companies, Transmittal Nos. 247, 259, and 277, DA 87-1101, released July 31, 1987, at para. 13.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-260

In the Matter of

Amendment of Section 73.202(b),	RM-6161
Table of Allotments,	RM-6293
FM Broadcast Stations.	
(Mio and Harbor Springs,	
Michigan)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 9, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration two separate conflicting petitions for rule making. The first was filed by David C. Schaberg (Schaberg), requesting the substitution of FM Channel 281C2 for Channel 280A at Mio, Michigan, and modification of his construction permit for Channel 280A (BPH 851216ML) to specify operation on Channel 281C2. The second petition was filed by Running Rhodes, Inc. (Rhodes), requesting the substitution of FM Channel 280C2 for Channel 280A at Harbor Springs, Michigan, and modification of its permit for Channel 280A (BPH 850613MB) to specify operation on Channel 280C2. The two proposals are mutually exclusive, and could provide either Mio or Harbor Springs with its first wide coverage area channel.

2. We shall propose to modify the permit held by Schaberg for Channel 280A to specify operation on Channel 281C2 at Mio, or to modify the permit held by Rhodes for Channel 280A to specify operation on Channel 280C2 at Harbor Springs in accordance with Section 1.420(g) of the Commission's Rules. We request Schaberg and Rhodes to provide a comparative analysis of the proposals. In particular, the showing should demonstrate from the proposed sites which of the proposals will provide service to a greater population and area in the expanded service area. Channel 281C2 can be allotted to Mio in compliance with the Commission's spacing requirements provided there is a site restriction 10.4 kilometers (6.5 miles) west of the community.[1] The site restriction will prevent a conflict with a construction permit for Station WKJC on Channel 284C2 at Tawas City, Michigan.[2] Channel 280C2 can be allotted to Harbor Springs, Michigan, in compliance with the Commission's spacing requirements at Rhode's site, provided Channel 280A is deleted at Mio, Michigan.[3] Rhodes proposes the substitution of Channel 272A for Channel 280A at Mio. Channel 272A can be allotted to Mio at the current site of Schaberg's permit or at city reference coordinates.[4] Since Mio and Harbor Springs are both located within 320 kilometers (200 miles) of the common U.S.-Canadian border, concurrence of the Canadian government will be required for either allotment.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require that the proponent of the new allotment make a commitment that it will reimburse the affected station for the costs incurred in changing frequencies. Rhodes has indicated that, although there should be no costs involved at this point in a change of channel since construction of Channel 280A at Mio has not commenced, if its petition is granted, Rhodes will defray any reasonable costs incurred by Schaberg if the Commission adopts Rhodes' proposal.

4. In order to provide a wide coverage area station for Mio, Michigan or Harbor Springs, Michigan, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No. Present	Proposed
ALTERNATIVE I		
Mio, Michigan	280A	281C2
ALTERNATIVE II		
Harbor Springs, Michigan	280A	280C2
Mio, Michigan	280A	272A

5. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, David C. Schaberg, permittee of Channel 280A, Mio, Michigan, SHALL SHOW CAUSE why its permit should not be modified to specify operation on Channel 272A in lieu of Channel 280A.

6. Pursuant to Section 1.87 of the Commission's Rules, David C. Schaberg, may, not later than **August 1, 1988**file a written statement showing with particularity why his permit should not be modified as proposed in the *Order to Show Cause*. The Commission may call on David C. Schaberg, to furnish additional information. If David C. Schaberg, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, David C. Schaberg will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

David C. Schaberg
6250 S. Cedar
Suite 12B001
Lansing, Michigan 48911-5715
(Permittee for Channel 280A, Mio, Michigan)

Carroll Enterprises, Inc.
Box 549 (Station WKJC(FM))
Tawas City, Michigan 48763
(Permittee for Channel 284C2, Tawas City, Michigan)

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David C. Schaberg 6250 S. Cedar Suite 12B001 Lansing, Michigan 48911-5715	Running Rhodes, Inc. Howard Binkow, President 4824 Lower Shore Drive Harbor Springs, Michigan 49740

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 281C2 at Mio are 44-40-00 and 84-15-30.

[2] The allotment at the restricted site of Channel 281C2 to Mio, Michigan, is short spaced to Channel 280A at Tawas City, Michigan. However, Station WKJC, Tawas City, was authorized to move to Channel 284C2 in MM Docket 81-854. A construction permit has been issued for Channel 284C2 at Tawas City (BPH 512116ML).

[3] The coordinates for Channel 280C2 at Harbor Springs are 45-29-02 and 84-58-00.

[4] The site coordinates for Channel 272A are 44-40-00 and 84-15-30. The city reference coordinates are 44-39-06 and 84-07-42.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-259

In the Matter of

Amendment of Section 73.202(b),	RM-5892
Table of Allotments,	RM-6292
FM Broadcast Stations.	
(Faribault and Blooming Prairie, Minnesota)	

NOTICE OF PROPOSED RULE MAKING

Adopted: May 4, 1988; Released: June 10, 1988

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration three petitions for rule making. The first was filed by KDHL, Inc. (KDHL), requesting the substitution of FM Channel 298C2 for Channel 240A at Faribault, Minnesota. KDHL also requests modification of its license for Station KDHL-FM to specify operation on the new channel. Subsequently, the Commission received a petition from Richard Johnson proposing the allotment of FM Channel 298C2 as Faribault's second FM channel. The petition is formally deficient in that it did not include coordinates or an engineering study. However, we shall treat this request as an expression of interest in the allotment of Channel 298C2 to Faribault. The third petition was filed by Blooming Prairie Development Corporation (BPDC), requesting the allotment of FM Channel 299A to Blooming Prairie, Minnesota. The allotment could provide Faribault with its first wide coverage area channel or a second broadcast service, or Blooming Prairie with its first broadcast service.

2. We shall offer both the KDHL and BPDC proposals for comment and request the petitioners or other parties to provide a comparative analysis on the proposals. Channel 298C2 can be allocated to Faribault in compliance with the minimum distance separation requirements provided there is a site restriction 11.8 kilometers (7.3 miles) southwest of the community.[1] The site restriction will prevent a conflict with Channel 298C1, Station WCCN-FM, Neillsville, Wisconsin. Channel 299A can be allocated to Blooming Prairie in compliance with the Commission's spacing requirements provided there is a site restriction 10.7 kilometers (6.7 miles) east of the community.[2] The site restriction will prevent a short spacing to Station KICD-FM, Channel 299C1, Spencer, Iowa and Station KMGK, Channel 300C, Anoka, Minnesota.

3. We shall not propose to modify the license of Station KDHL-FM, Channel 240A, as requested by KDHL, to specify operation on Channel 298C2 at this time. In conformity with Commission precedent, where another party indicates an interest in a non-adjacent Class C2 allotment, the modification can not be implemented unless an additional equivalent channel is also allocated. *See , Modification of FM and TV Station Licenses*, 98 FCC 2d 916 (1984). Unless another Class C2 or higher class channel is found to be available for allotment to Faribault, we would afford Richard Johnson and other interested parties an opportunity to apply for Channel 298C2. However, should another Class C2 channel be allocated to Faribault, we could then modify KDHL's license to specify operation on Channel 298C2 in lieu of Channel 240A.

4. In order to provide a wide coverage area station or a second broadcast service to Faribault or a first local service to Blooming Prairie, Minnesota, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No. Present	Proposed
ALTERNATIVE I		
Faribault, Minnesota	240A	298C2
Faribault, Minnesota	240A	240A, 298C2
ALTERNATIVE II		
Blooming Prairie, Minnesota	—	299A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **August 1, 1988,** and reply comments on or before **August 16, 1988,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes
1359 Black Meadow Road
Spotsylvania, Virginia 22553
(Counsel for KDHL, Inc.)

Richard Johnson
1044 Westwood Drive
Faribault, Minnesota 55021

Christopher J. Reynolds
Dempsey and Koplovitz
1401 New York Avenue, N.W.
Washington, D.C. 20005
(Counsel for Blooming Prairie)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Steve Kaminer
Deputy Chief, Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for Channel 298C2 at Faribault are 44-14-14 and 93-23-41.

[2] The coordinates for Channel 299A at Blooming Prairie are 43-51-25 and 92-55-10.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 10, 1988

AT&T FILES REVISIONS TO COST ALLOCATION MANUAL PUBLIC COMMENT INVITED

On May 31, 1988, the American Telephone and Telegraph Company (AT&T) filed revisions to its Part 64 cost allocation manual for the separation of regulated and nonregulated costs. The original manual was filed in 1987 pursuant to the requirements of the Commission's *Joint Cost Order*, 2 FCC Rcd 1298 (1987). The Common Carrier Bureau approved the manual on March 29, 1988, conditional upon the filing of numerous specified revisions. *See American Telephone and Telegraph Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 1786 (1988).

AT&T's filing contains two groups of proposed revisions. AT&T states that the first group complies with the refiling requirements set forth in the Bureau's Order in all respects, and that the second group reflects the positions taken in AT&T's April 29, 1988 petition for reconsideration and clarification of that Order.

Comments on the proposed revisions may be filed no later than **July 11, 1988.** Replies should be filed by **July 26, 1988.** Comments should reference file number AAD 7-1885.

Copies of the cost manual revisions may be obtained from International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are also available for public inspection and copying in Room 812, 2000 L St., N.W., Washington, D.C. 20554.

For further information contact William A. Kehoe III at (202) 632-7500.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

REM COMMUNICATION — File No. 87818-CL-P-245-A-86

For authority to construct and operate a system in Domestic Public Cellular Radio Telecommunications Service in the Ocala, Florida MSA.

MEMORANDUM OPINION AND ORDER

Adopted June 3, 1988; Released: June 16, 1988

By the Commission:

1. REM Communication (REM) has filed an application seeking review of the action taken by the Mobile Services Division (MSD) dismissing the above-captioned application as defective.

BACKGROUND AND CONTENTIONS

2. The application filed by REM was chosen first in the lottery for the Ocala, Florida non-wireline cellular license and REM became the tentative selectee by Public Notice dated January 16, 1987. The REM application was returned by the MSD because (1) the map submitted pursuant to Section 22.913(a)(2) of the rules was illegible and failed to provide longitude, latitude and scale (a reduced copy of the map that was submitted with the application is appended), and (2) the application was internally inconsistent in that Item 10 of the application indicated the applicant was a corporation while Exhibit 1 indicated the applicant was an individual. On February 17, 1987, REM filed a petition for reconsideration of the January 16, MSD action. On March 26, 1987 the Bureau denied reconsideration.[1] In this Application for Review, REM requests (1) the reversal of the MSD denial of reconsideration; (2) acceptance of its minor amendment and (3) reinstatement of its application as lottery winner.

3. In the Application for Review, REM argues first that the defects for which the REM application was dismissed are minor. REM then argues that the Bureau's action was inconsistent with prior Bureau actions. In this case the Bureau found that although the "letter perfect" standard was inapplicable, the application was unacceptable for filing and prohibited REM from amending its application. However, REM cites *Florida Cellcom*, 2 FCC Rcd 1764 (March 25, 1987), *Advanced Business Communications, Inc. (Advanced)* 2 FCC Rcd 580 (January 28, 1987) and *Burton K. Werner (Werner)*, 2 FCC Rcd 1484 (March 9, 1987) as cases where the Commission has accepted amendments to applications initially dismissed after a lottery. REM compares its case with *Florida Cellcom*, where the Commission found that the applicant's response of "yes" to Item 14 of the application[2] instead of "no" was a clerical error and permitted the applicant to correct the error by amendment. REM argues that the mistake in its application whereby Item 10 erroneously identified the applicant as a corporation is classifiable as a clerical error and REM should therefore be permitted to amend.

4. REM cites *Advanced* as a case where the Commission permitted the applicant to correct a minor defect by amendment. In *Advanced* the applicant had reported a foreign officer. The applicant alleged that the report of a foreign officer was a clerical mistake and that the alien was actually only an office secretary. REM states that the error in *Advanced* was far more serious than the error REM made because the error in *Advanced* involved a basic legal qualification.

5. In *Werner* the CCB reinstated an application that was dismissed after lottery selection because it was determined that one page of the microfiche copy that was thought to have been missing had actually been superimposed onto another page thereby making it illegible to read. REM argues that just as in *Werner*, the illegibility of the map was due to faulty reproduction. REM argues that the MSA/CGSA boundaries and the 39 dBu contours are shown on the map and details with respect to other aspects of the map are found elsewhere in the application.

DISCUSSION

6. We find that REM's application was properly dismissed and thus we affirm the holding in the reconsideration order. It is well established that minor errors in an application that has been found acceptable for filing may be corrected by amendment. [3] However, the illegibility of the map submitted by REM rendered the application unacceptable for filing and the application was properly dismissed. REM assumes that because the application passed the initial intake screening under *Johnstown Cellular*, 1 FCC Rcd 1164 (1986), the application was acceptable for filing and cannot now be dismissed. We disagree. The stage at which the "letter perfect" rule is applied is not the only point in time at which an application is judged acceptable for filing. Under *Johnstown*, "letter perfect" criteria are used only for the initial intake of applications. *See also, Memorandum Opinion and Order on Further Reconsideration, Amendment of Commission's Rules to Allow Selection of Mutually Exclusive Cellular Applications by Lottery*, 59 RR 2d 407, 410 at n. 16, (1985). Review of applications for filing acceptability, however, continues after lottery selection. *Bruce M. Schorsten*, DA 87-1198, 2 FCC Rcd 5421 (1987).

7. Therefore, even though an application may have satisfied the "letter-perfect" rule and passed through the initial intake of application stage, defects may still be found which would render that application defective and unacceptable for filing thereby leading to its dismissal. Being unacceptable for filing, an application may not be amended after the filing date or after the lottery to bring it into compliance with the rules. *See* Section 22.918(b); *Clyde W. Pierce* 2 FCC Rcd 3522 (1987).

8. Section 22.20 states that an application will be unacceptable for filing and returned to the applicant if:

(1) the application is defective with respect to completeness of answers to questions, informational showings, execution or other matters of a formal character, or

(2) The application does not comply with the Commission's rules, regulations, specific requirements for additional information, or other requirements.

9. REM failed to comply with Section 22.913 of the Commission's rules, which requires an applicant to submit "[a]n exhibit including a map or maps of the cellular system's existing Cellular Geographic Service Area, if any, and the Cellular Geographic Service Area proposed in the application." The applicant failed to comply with Section 22.913 because the applicant did not submit an acceptable map. Section 22.2, provides that all maps submitted under Part 22 shall include latitude, longitude and scale. The map submitted by REM is so illegible that it is impossible to determine any latitude, longitude or scale markings.[4] Such a map prevents the application from being properly processed and reviewed by staff engineers. There are no legible reference coordinates on the map. Without the reference coordinates the staff is unable to verify that the cell sites are properly plotted on the map. In addition, since the county boundaries on the map are illegible, it is impossible to determine the boundaries and names of the CGSA and the MSA or their relationship to each other. This type of verification is not possible by use of information that appears elsewhere in the application. Therefore, the application could not be processed because of the absence of an acceptable map which rendered the application incomplete and unacceptable for filing.[5] As such, the MSD's dismissal was proper.

10. REM claims that, as in *Werner*, faulty reproduction was the cause of the illegibility of the map and that under *Werner* it should be permitted to amend. In *Werner*, the applicant did not fail to submit an item as required under the rules. The original application was complete. In addition, the page in question was actually microfiched but because of faulty reproduction, it was transposed into another page. Further, we stated in *Werner* that since the microfiche is primarily for public reference, if a member of the public needed to see that page he could view the original. Here, in contrast, REM did not submit a map as required by Section 22.913 and defined in Section 22.2. *Cf., Order on Reconsideration, Petitions for Reconsideration of the Return of Round IV Cellular Applications for Having Defective Maps*, FCC 86-37, released January 24, 1986 (the Commission affirmed the dismissal by the MSD of application filed by Celcom, Inc. that did not include a map of the required scale and affirmed the dismissal of an application filed by Country Wide Cellular Inc. that did not clearly indicate the latitude and longitude).

11. We find that REM's error in item 10 of its FCC Form 401, where REM checked the "corporation" box instead of the "individual" box, is a clerical error pursuant to our holdings in *Florida Cellcom*, and *Advanced*. However, REM's application remains unacceptable for filing because of REM's failure to submit a map that satisfies the requirements of Section 22.2.

12. Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED, that the Application for Review filed by REM Communications IS HEREBY DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

FOOTNOTES

[1] In the reconsideration order the Common Carrier Bureau (CCB) denied reconsideration and found the application defective under Section 22.20. The Bureau refused to accept an amendment submitted by REM finding that the application was unacceptable for filing. *REM Communication*, DA 87-313, released March 26, 1987.

[2] Item 14 asks whether the applicant or any party to the application had any FCC station license or permit revoked or had any application for permit, license or renewal denied by this Commission.

[3] *Charles Mitchell Dant*, 2 FCC Rcd 5584 (1987).

[4] We note that pursuant to Section 22.913 of the Rules, all applicants must certify that their applications are "complete in every respect." Even a cursory examination of the map by the applicant should have demonstrated that it was obviously not complete.

[5] This case is distinguishable from *U. S. West NewVector*, DA 87-282, released August 31, 1987, in which the Commission reversed an MSD order dismissing an application because the scale was not printed on the face of the map. The Commission deemed dismissal of the application to be "unduly harsh" in that case, as the map scale was referenced elsewhere in the application and the staff engineers were still able to evaluate the applicant's engineering proposal. In this case the map submitted by REM is completely illegible and useless for processing purposes. The information needed here is not information that can be obtained from other exhibits in the application.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI COMMUNICATIONS
CORPORATION and
SATELLITE BUSINESS
SYSTEMS,
Complainants,

v. File No. E-88-58

LONG DISTANCE SERVICE OF
WASHINGTON, INC.,
Respondent.

ORDER

Adopted: June 7, 1988; Released: June 14, 1988

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On March 7, 1988, MCI Telecommunications Corporation and Satellite Business Systems (together complainants) filed a formal complaint with the Commission against Long Distance Service of Washington, Inc. (LDS). Complainants alleged that LDS unlawfully withheld monies owed to complainants, an act they claim is in violation of the Communications Act, and sought to recover those monies.

2. The Common Carrier Bureau granted LDS extensions of time until June 1, 1988, to facilitate the ongoing negotiations between the parties. On June 1, 1988, Complainants filed with the Commission a Motion to Dismiss their complaint stating that the parties had resolved the issues in the complaint and that no matters remain in controversy.

3. Accordingly, IT IS ORDERED, pursuant to the authority delegated in 47 C.F.R. § 0.291, that the Motion to Dismiss filed by MCI Telecommunications Corporation and Satellite Business Systems IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaint IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 87-274

In the Matter of

Amendment of Section 22.901(d)
of the Commission's Rules to
Eliminate Commission Review of
Capitalization Plans for Mobile
Radio Cellular Systems

REPORT AND ORDER

Adopted: May 31, 1988; Released: June 14, 1988

By the Commission:

I. INTRODUCTION

1. In a *Notice of Proposed Rule Making* released August 4, 1987,[1] this Commission proposed to eliminate the capitalization plan filing and updating requirements contained in Section 22.901(d)(3) of the Rules.[2] That rule requires the Regional Bell Operating Companies (RBOCs) to obtain this Commission's approval of the manner in which they capitalize their subsidiaries providing mobile radio cellular operations, prior to obtaining any interest in or transferring any assets to such corporations and prior to modifying any Commission-approved cellular capitalization plan. These capitalization plan filing and updating requirements are the only remaining capitalization plan requirements imposed by Commission rule.

2. The only parties that filed comments in response to the *Notice* were the seven parties subject to the rule. [3] These parties unanimously support our proposal to eliminate the cellular capitalization plan filing and updating requirements. After review of the comments and our analysis of the need for the rule, we conclude that we should implement the proposal made in the *Notice*.

II. BACKGROUND

3. The cellular capitalization plan filing and updating requirements stem from this Commission's decision in the *Cellular Rule Making Order*,[4] to permit wireline carriers to operate mobile radio cellular systems. To protect against possible improper cross-subsidization and interconnection abuses, we required such carriers to provide mobile radio cellular service only through corporate entities that are structurally separate from subsidiaries providing landline telephone exchange and transmission services.[5] Our cellular structural separation requirements were patterned after the requirements promulgated in the *Second Computer Inquiry* [6] for customer premises equipment (CPE) and enhanced services operations, and accordingly included capitalization plan filing and updating requirements similar to the *Computer II* requirements.[7]

4. We initially applied our cellular capitalization plan, as well as our other cellular structural separation requirements, to all wireline carriers.[8] On reconsideration, however, we eliminated those requirements for all carriers except AT&T.[9] AT&T submitted a cellular capitalization plan that proposed to combine all of AT&T's cellular operations in a single subsidiary having a993.7 million capitalization level. In the *AT & T Cellular Order*,[10] we approved that capitalization plan. We determined that state regulators could resolve any questions that might arise regarding the magnitude or source of funds for cellular operations. Therefore, we limited our review of that plan to the impact of proposed asset transfers on conventional wireline service ratepayers, on the accounting treatment to be accorded AT&T's preoperational expenses, and on AT&T's efforts to comply with the nonmonetary elements of our cellular structural separation requirements.[11]

5. While we were reviewing AT&T's cellular capitalization plan, AT&T transferred ownership of its cellular service operations to the Bell Operating Companies (BOCs) to facilitate compliance with the *Modification of Final Judgement (MFJ)*. [12] In the *BOC Separation Order*,[13] we decided that the RBOCs and their affiliates should conduct cellular radio, CPE, and enhanced services operations on structurally separated bases subsequent to divestiture from AT&T. Consistent with our determinations in the *Cellular Rule Making Order* and the *Computer II* proceeding, we included capitalization plan filing and updating requirements among the structural separation requirements that would apply to these operations.[14]

6. We have recently reexamined the capitalization plan requirements for the RBOCs' CPE and enhanced services operations. In the *Computer III Phase I Order*,[15] we declined to include capitalization plan requirements among the nonstructural safeguards for those operations. We found that permanent capitalization plan requirements would not be necessary to prevent either the degradation of regulated communications services or improper capital transfers to CPE and enhanced services operations.[16] In addition, after requesting further comment on the question of eliminating our capitalization plan requirements for CPE and enhanced services operations prior to implementation of the nonstructural safeguards we promulgated for those operations,[17] we decided that those requirements should expire once the BOCs implement approved cost allocation manuals in accordance with our *Joint Cost* rules.[18] Such implementation occurred on January 1, 1988.[19]

7. In the *Notice*, we tentatively concluded that our cellular capitalization plan filing and updating requirements impose significant costs without serving any overriding regulatory purpose.[20] We stated that the reasons which warranted the elimination of permanent capitalization plan requirements for CPE and enhanced services are compelling with regard to cellular services, and that we saw no reason for continuing to impose cellular capitalization plan requirements. We expressed concern that these requirements can be an extremely intrusive form of regulation. We indicated that our capitalization plan requirements may unduly delay RBOC investments in cellular services, to the detriment of users of those services.[21]

8. We also tentatively concluded in the *Notice* that elimination of our cellular capitalization plan requirements would not adversely affect conventional wireline ratepayers. We stated our belief that no foreseeable increases in the RBOCs' cellular capitalization levels will

threaten regulated communications services. Although we recognized that other regulated communications services should not cross-subsidize cellular services, we indicated that cellular capitalization plan requirements may not be necessary to prevent cross-subsidization. We also maintained that we need not retain our cellular capitalization plan requirements to ensure compliance with our accounting procedures for preoperational expenses and with the nonmonetary aspects of our cellular structural separation requirements. We stated that our routine auditing procedures should be sufficient to accomplish these objectives.[22]

III. THE PARTIES' POSITIONS

9. All parties to this proceeding support our proposal to eliminate the cellular capitalization plan filing and updating requirements. The parties agree that the reasons that persuaded this Commission to eliminate the capitalization plan requirements for CPE and enhanced services are also persuasive with regard to the cellular capitalization plan requirements. Indeed, U S West contends that the case for removal of the cellular requirements is even more compelling than the case for removing the CPE and enhanced services requirements, because cellular capitalization plans have always been subject to less stringent review than CPE and enhanced services capitalization plans.[23]

10. The parties also agree that our cellular capitalization plan requirements impose significant costs. Bell Atlantic, for instance, asserts that at this stage in the development of the cellular industry, the effect of Section 22.901(d)(3) is to require the RBOCs to obtain Commission approval before providing any additional funds to their cellular radio subsidiaries. Bell Atlantic and BellSouth state that the rule creates the possibility that this Commission will second guess the RBOCs' exercise of their independent business judgement.[24] According to BellSouth, the rule limits the RBOCs' ability to capitalize their cellular subsidiaries in the manner most responsive to the competitive marketplace.[25] Other RBOCs cite the costs of preparing applications for capitalization plan approval. These parties maintain that our cellular capitalization plan requirements interject delay and uncertainty into RBOC attempts to acquire cellular properities. This delay and uncertainty, they assert, may disadvantage the RBOCs in bidding for cellular properties.[26]

11. The RBOCs contend that the elimination of the cellular capitalization plan requirements would not adversely affect ratepayers. Ameritech argues that our requirements that the RBOCs maintain separate personnel, offices, transmission facilities, and officers for their cellular subsidiaries ensure that BOC personnel and resources will not be diverted to cellular operations. Ameritech states that capitalization plan review is not needed to prevent competitive abuses in the cellular industry.[27] NYNEX claims that experience has shown that RBOC investments in cellular operations will not result in the degradation of other regulated communications services.[28]

12. The parties also agree that capitalization plan review is an inappropriate regulatory mechanism. Southwestern maintains that routine auditing procedures can be used to prevent improper cost shifting and discrimination.[29] In Southwestern's view, RBOCs will generally expand their cellular operations by acquiring existing cellular licenses or licensees. Southwestern states that we will have ample opportunity to address any legitimate public interest questions that might arise in connection with such acquisitions when we review the associated transfer or assignment applications.[30] Pacific believes that the direct monitoring of regulated operations by the appropriate federal or state agencies protects ratepayer interests more efficiently and appropriately than does the review of cellular capitalization plans.[31] BellSouth states that even where the states are not actively regulating cellular service, they retain authority to investigate any alleged cross-subsidization.[32]

IV. DISCUSSION

13. We adopt our proposal to eliminate our cellular capitalization plan requirements. We are convinced that they serve no regulatory purpose which would outweigh the significant costs they impose.

14. In the *Computer III* proceeding, this Commission determined that capitalization plan requirements for CPE and enhanced services would not be necessary to prevent either the degradation of regulated communications services or the misallocation of costs to such services.[33] We conclude that the record in this proceeding adequately demonstrates that these reasons also warrant the elimination of the RBOCs' cellular capitalization plan requirements. The comments establish that the cellular capitalization plan review is an intrusive form of regulation that potentially places this Commission in the position of second guessing the RBOCs' exercise of their independent business judgement. The requirements limit the RBOCs' ability to respond to marketplace forces in capitalizing their cellular subsidiaries and in attempting to purchase cellular properties. These costs are in addition to the costs that the RBOCs and this Commission incur in preparing and reviewing applications for cellular capitalization plan approval.

15. We believe that continued imposition of these costs is unwarranted. As the *Notice* indicated, the Common Carrier Bureau has focused on the effect of proposed asset transfers on the conventional wireline ratepayer in reviewing cellular capitalization plans filed since divestiture. We stated that we foresaw no increases in the RBOCs' cellular capitalization levels that might threaten regulated communications services or otherwise adversely affect wireline ratepayers.[34] No party has disagreed with this conclusion. In addition, the comments have confirmed that existing state and federal requirements, other than the cellular capitalization plan requirements, are sufficient to prevent improper cross-subsidization and interconnection abuses. We agree with the position of certain parties that capitalization plan review is not necessary for detecting cross-subsidization and interconnection abuses. We believe that more direct mechanisms, such as our requirement that the RBOCs maintain separate books of account for their cellular subsidiaries, adequately protect ratepayer interests.

16. This Commission has also used the cellular capitalization plan review process to ensure that carriers comply with our accounting requirements for preoperational expenses and with the nonmonetary aspects of our cellular structural separation requirements.[35] The comments have confirmed our view that routine auditing procedures will be sufficient to ensure compliance with those requirements. As we indicated in the *Notice*, our accounting procedures for preoperational expenses are well established, and the nonmonetary aspects of our cellular structural separation requirements continue to be

self-executing.[36] Therefore, we conclude that the elimination of the cellular capitalization plan requirements will not adversely affect conventional wireline ratepayers.

V. PAPERWORK REDUCTION ACT

17. The amendments being adopted in this *Order* have been analyzed with respect to the Paperwork Reduction Act of 1980[37] and have been found not to be subject to the procedures of Section 3507 of that Act,[38] because we are eliminating rule requirements which apply to fewer than ten independent entities.

VI. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 4(j), 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Secs. 151, 154(i), 154(j), 218, 220, and 403, and Section 553 of the Administrative Procedure Act, 5 U.S.C. Sec. 553, that the rule changes discussed in this Order ARE ADOPTED, effective **July 29, 1988.** [39]

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

APPENDIX

Part 22 of the Commission's Rules and Regulations, 47 C.F.R. Part 22, is amended as follows:

1. The authority citation for Part 22 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553, unless otherwise noted.

2. 22.901 *Eligibility*.

Section 22.901(d)(1) is amended by inserting the word "and" after the semicolon.

Section 22.901(d)(2) is amended by removing "; and" and inserting "." after the word "conditions".

Section 22.901(d)(3) is removed.

FOOTNOTES

[1] Amendment of Section 22.901(d) of the Commission's Rules to Eliminate Commission Review of Capitalization Plans for Mobile Radio Cellular Systems, 2 FCC Rcd 4598 (1987)(*Notice*).

[2] 47 C.F.R. Sec. 22.901(d)(3).

[3] The commenting parties are Ameritech Mobile Communications, Inc. (Ameritech); Bell Atlantic Mobile Systems, Inc. (Bell Atlantic); BellSouth Corporation (BellSouth); NYNEX Mobile Communications Company (NYNEX); Pacific Telesis Group (Pacific); Southwestern Bell Corporation (Southwestern Bell); and U S West NewVector Group, Inc. (U S West). There were no reply comments.

[4] Cellular Communications Systems, 86 FCC 2d 469 (1981)(*Cellular Rule Making Order*), *recon.*, 89 FCC 2d 58 (*Cellular Reconsideration Order*), *further recon.*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983).

[5] *See Cellular Reconsideration Order*, 89 FCC 2d at 78-80; *Cellular Rule Making Order*, 86 FCC 2d at 493-95.

[6] *Final Decision*, 77 FCC 2d 384, *modified on recon.*, 84 FCC 2d 50 (1980), *further modified on recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further recon.*, FCC 84-190 (released May 4, 1984).

[7] *Cellular Rule Making Order*, 86 FCC 2d at 564-65 (text of former Section 22.901(c) of the Commission's Rules).

[8] *Id.* at 493-95.

[9] *Cellular Reconsideration Order*, 89 FCC 2d at 78.

[10] American Telephone & Telegraph Co., 53 RR 2d 1083 (1983).

[11] *Id.* at 1087.

[12] United States v. American Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982), *aff'd* sub nom. Maryland v. United States, 460 U.S. 1001 (1983).

[13] *Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies*, 95 FCC 2d 1120 (1983), recon., 49 Fed. Reg. 26056 (June 26, 1984), *aff'd sub nom. Illinois Bell Telephone Co. v. FCC*, 740 F.2d 465 (7th Cir. 1984), decision on recon. *aff'd sub nom. North American Telecommunications Ass'n v. FCC*, 772 F.2d 1282 (7th Cir. 1985).

[14] *BOC Separation Order*, 95 FCC 2d at 1145-47.

[15] *Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958 (1986)(Computer III Phase I Order), *recon. denied* in pertinent part, 2 FCC Rcd 3035 (1987), further recon. 3 FCC Rcd 1135 (1988).

[16] *Computer III Phase I Order*, 104 FCC 2d at 1076-77, paras. 238-39.

[17] Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), Supplemental Notice of Proposed Rulemaking, CC Docket 85-229, FCC 86-253, slip op. at para. 59.

[18] *Amendment to Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, 3099, para. 186 (1987)(Computer III Phase II Order), recon., 3 FCC Rcd 1150 (1988); see also *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, 2 FCC Rcd 1298, recon.*, 2 FCC Rcd 6283 (1987), petitions for further recon. pending.

[19] See, e.g., *Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs*, 3 FCC Rcd 433 (1988).

[20] 2 FCC Rcd at 4599, para. 9.

[21] *Id.* at paras. 11-12.

[22] *Id.* at paras. 14-15.

[23] U S West Comments at 3.

[24] Bell Atlantic Comments at 2-3; BellSouth Comments at 1-2.

[25] BellSouth Comments at 2.

[26] See, e.g., Pacific Comments at 4; U S West Comments at 4.

[27] Ameritech Comments at 4-7.

[28] NYNEX Comments at 2.

[29] Southwestern Comments at 2; see also Bell Atlantic Comments at 5 n.3.

[30] Southwestern Comments at 3-4.

[31] Pacific Comments at 1-2.

[32] BellSouth Comments at 2.

[33] *Computer III Phase I Order*, 104 FCC 2d at 1076-77, paras. 238-39; *Computer III Phase II Order*, 2 FCC Rcd at 3099, paras. 182-86.

[34] 2 FCC Rcd at 4599, para. 13, citing Southwestern Bell Capitalization Order, 1 FCC Rcd 1272, 1273, paras. 10-11 (1986).

[35] AT&T Cellular Order, 53 RR 2d at 1087.

[36] 2 FCC Rcd at 4599, para. 15.

[37] 44 U.S.C. Secs. 3501-20.

[38] 44 U.S.C. Sec. 3507.

[39] The Appendix to this Order contains the text of the rule changes.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-279

In re Applications of

LAQUETH FLEMING and GLORIA FLEMING (hereafter Fleming)	File No. BPH-870327MI
DAVID RINEHART (hereafter Rinehart)	File No. BPH-870331MG
C & D COMMUNICATIONS (hereafter C&D)	File No. BPH-870331NY
POUGHKEEPSIE BROADCASTING LIMITED (hereafter PBL)	File No. BPH-870331OR
OCEAN WAVES BROADCASTING (hereafter Ocean)	File No. BPH-870331PA
HARVEST BROADCASTING (hereafter Harvest)	File No. BPH-870331PP
WICRAE EQUITIES LIMITED (hereafter Wicrae)	File No. BPH-870414KH
POUGHKEEPSIE COMMUNICATIONS LIMITED PARTNERSHIP (hereafter PCLP)	File No. BPH-870415KT
HAL COMMUNICATIONS (hereafter HAL)	File No. BPH-870415KX
THE KINNEY GROUP (hereafter Group)	File No. BPH-870415ME
FARR BROADCASTING, INC. (hereafter Farr)	File No. BPH-870415MJ

For a Construction Permit for a
New FM Station on Channel 241A
in Poughkeepsie, New York

HEARING DESIGNATION ORDER

Adopted: May 27, 1988; Released: June 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Reporting.* Pursuant to 47 C.F.R. § 1.65, applicants are responsible "for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application." Staff review of Commission records reveals that Harvest failed to comply with 47 C.F.R. § 1.65. First, in response to FCC Form 301, Section II, Item 6(a), Harvest failed to report the attributable interest of its sole principal Brian Dodge in a pending application for new FM service to Haverhill, New Hampshire (BPH-870327KG). Furthermore, Harvest failed to amend its response to Form 301, Section II, Item 6(a) to report Dodge's subsequent acquisition of attributable interests in pending applications for new AM service to: Center Rutland, Vermont (BP-871130AF); Berlin, Vermont (BP-871130AG); Hallowell, Maine (BP-871130AH); and Suncook, New Hampshire (BP-871130AJ). Additionally, Harvest failed to timely disclose Dodge's attributable interest in an application for new FM service to Winchester, New Hampshire (BPH-880126NN). Therefore, Harvest will be ordered to file an amendment within 30 days with the presiding Administrative Law Judge updating its application with respect to all broadcast interests. Accordingly, an appropriate reporting issue will be specified regarding whether Harvest failed to comply with 47 C.F.R. § 1.65 with respect to the broadcast interests of its principal and timely report such interests to the Commission.

3. *Radio Frequency Radiation.* Fleming, PBL, Wicrae and Group propose to colocate their respective antennas on the existing tower of WHVW(AM). Harvest and HAL propose to side-mount their antennas on the existing WEOK(AM) tower. Engineering study indicates in each case that the combined operation of the existing station and the new proposal may significantly exceed the radio frequency (RF) radiation guidelines recommended in "American National Standard Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields" issued by the American National Standards Institute (ANSI C 95.1 - 1982). *See* 47 C.F.R. § 1.1307(b). Accordingly, Fleming, PBL, Harvest, Wicrae, HAL and Group will be required to amend their applications within 30 days of the date of this Order to demonstrate compliance with the RF radiation guidelines. The cumulative effect of the proposed operation and all nearby RF sources must be considered. Because the proposals may have significant environmental impact as defined by 47 C.F.R. § 1.1307, these applicants will be required to submit environmental impact information described in 47 C.F.R. § 1.1311. Accordingly, Fleming, PBL, Harvest, Wicrae, HAL and Group will be required to file an environmental assessment with the presiding Administrative Law Judge within 30 days of the release of this Order. In addition, a

copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. The comparative phase of the case therefore will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

4. *Tower Height Discrepancies.* HAL proposes to side mount its antenna on the existing tower of WEOK(AM). The tower data submitted in Section V-G of FCC Form 301 in HAL's application, however, is inconsistent with that contained in the Commission's records. In Item 5, Section V-G, FCC Form 301, HAL lists the overall height above ground level (AGL) of the WEOK(AM) tower as 61 meters (200 feet) and the overall height above mean sea level (AMSL) of the WEOK(AM) tower as 131 meters (430 feet). Commission records show that the existing tower has heights of 63 (207 feet) AGL and 130 meters (427 feet) AMSL. Similarity, Group proposes to colocate its antenna on the existing tower of WHVW(AM). Group also submits tower data in Section V-G of FCC Form 301 which is inconsistent with that contained in the Commission's records. In Item 5, Section V-G, FCC Form 301, Group lists the WHVW(AM) tower as having heights of 72.2 meters (237 feet) AGL and 160.3 meters (526 feet) AMSL while Commission records indicate heights of 72.8 meters (239 feet) AGL and 155.1 meters (509 feet) AMSL. Because HAL and Group propose to locate on an existing tower licensed to an existing Commission licensee, and because specific reference is made to these existing towers in the application in question, the staff could confidently and reliably verify the pertinent tower heights by taking official notice of the tower parameters found in the Commission's records for the licensed facilities. Accordingly, these applications are acceptable for filing. However, HAL and Group will be required to file amendments with the presiding Administrative Law Judge, within 30 days of the release of this Order, correcting the tower heights listed in their respective proposals.

5. *Tower Coordinate Discrepancies.* Harvest and HAL propose to side- mount their antennas on the existing WEOK(AM) tower, but their applications contain coordinates for that tower which are inconsistent with those contained in Commission records. According to the Commission's data base, the accepted coordinates for this tower are 41' 43' 13" North Latitude, 73' 54' 31" West Longitude. Harvest's site map correctly plots these coordinates, however, in Section V-B, Item 4 and Section V-G, Item, FCC Form 301, Harvest lists the geographic coordinates of the tower as 41' 42' *14* " North Latitude, 73' 54' *29* " West Longitude, which results in a discrepancy of 1 second for the North Latitude coordinate and 2 seconds for the West Longitude coordinate respectively. HAL lists coordinates for the existing tower consistent with those found in the Commission's data base, but plots the geographic coordinates of the tower at 41' 43' *14* " North Latitude, 73' 54' *29* " West Longitude on its site map, which results in a discrepancy of 1 second for the North Latitude coordinate and 2 seconds for the West Longitude coordinate respectively. Because Harvest and HAL clearly propose to locate on an existing tower licensed to other Commission licensees, and because specific reference is made to this existing tower in the applications in question, the staff could, "drawing on the application[s] as a whole", confidently and reliably verify the transmitter location incorrectly listed in Harvest's application and incorrectly plotted on HAL's site map by taking official notice of the site coordinates found in the Commission's records for the licensed colocated facilities. Accordingly, these applications are acceptable for filing; however, Harvest and HAL will be required to file corrective amendments with the presiding Administrative Law Judge within 30 days of the release of this Order.

6. *Divestiture.* Group stated, in response to FCC Form 301, Section II, Item 7, that Group general partner Leonard R. Kinney is employed as the general manager of WHVW(AM), Hyde Park, New York. Group has pledged that following the final grant of its proposal, Kinney will divest himself of his management position with WHVW(AM). Accordingly, an appropriate condition will be specified below.

7. In response to Section VI, FCC Form 301, the applicants below have indicated that they will employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), each applicant is required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rules as set forth in FCC Form 396A, the 5-point Model EEO Program. The EEO programs submitted by the following applicants are incomplete or are otherwise deficient in the manner described below. Accordingly, each applicant listed below will be required to file an amended EEO Program with the presiding Administrative Law Judge within 30 days of the release of this Order.

APPLICANT	DEFICIENCIES
C&D	Failed to identify specific sources of recruitment specializing in minority candidates.
Group	Failed to identify specific sources of recruitment specializing in women and minority candidates

8. The applicant below has petitioned for leave to amend its application on the dates shown. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS FILED
Farr	November 3, 1987; March 22,1988

9. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the following applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by the applicant below would constitute a hazard to air navigation, an issue with respect thereto will be included and the F.A.A. made a party to the proceeding.

APPLICANT: Ocean.

10. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

11. Section II, item 5(a), FCC Form 301 (April 1985) requires an applicant to specify the residence of each of its principals. Rinehart and Harvest have not completed item 5(a) correctly. The Rinehart application gives only a Post Office Box number as the residence address of David Rinehart, and the Harvest application gives only a Post Office Box number as the residence address of principal Brian Dodge. Accordingly, these applicants must submit amendments which provide all the information required by Section II, item 5(a), FCC Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

12. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

13. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. (a) To determine the facts and circumstances surrounding Harvest's failure to timely update its application and whether Harvest violated 47 C.F.R. § 1.65.

(b) To determine, in light of the facts adduced pursuant to issue (a) above, whether Harvest misrepresented facts to or concealed information from, or attempted to mislead the Commission. (c) To determine, in light of the facts adduced pursuant to issues (a) and (b) above, whether Harvest possesses the basic qualifications to be a licensee of the facilities sought herein.

2. If a final environmental impact statement is issued with respect to Fleming, PBL, Harvest, Wicrae, HAL or Group, in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal(s) are consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.130 - 1319.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: Ocean.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

14. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Harvest shall submit an amendment to the presiding Administrative Law Judge updating its broadcast interests.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order the following applicants shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division. *APPLICANTS* : Fleming, PBL, Harvest, Wicrae, HAL, Group.

16. IT IS FURTHER ORDERED, That the following applicants shall submit an amendment in accordance with paragraph 4 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order: HAL, Group.

17. IT IS FURTHER ORDERED, That the following applicants shall submit an amendment in accordance with paragraph 5 hereinabove to the presiding Administrative Law Judge within 30 days of the release of this Order: Harvest, HAL.

18. IT IS FURTHER ORDERED, That in the event of a grant of the Group application, the construction permit shall be conditioned as follows:

> Prior to the commencement of operation of the station authorized herein, the permittee shall certify to the Commission that its general partner Leonard R. Kinney has divested himself of any management positions with WHVW(AM), Hyde Park, New York.

19. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, the following applicants shall submit Section VI information in accordance with the requirement of 47 C.F.R.§ 73.2080(c) to the presiding Administrative Law Judge: C&D, Group.

20. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by the following applicant ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein: Farr.

21. IT IS FURTHER ORDERED, That Rinehart and Harvest shall each submit an amendment which contains the information required by Section II, time 5(a), FCC Form 301, to the presiding Administrative Law Judge within 30 days of the release of this Order.

22. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

23. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

24. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c) in person or by attorney, within 20 days of the mailing of this Order, not later than July 5, 1988, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

25. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R § 73.3594, give notice of the hearing within the time and in the manner prescribed therein and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-280

In re Applications of

FPS BROADCASTING GROUP (hereafter FPS) File No. BPH-870428KB

VIRGINIA ANN HINE (hereafter Hine) File No. BPH-870429MM

REYNOLDS-PALMER MEDIA OF TEXAS, INC. (hereafter Reynolds) File No. BPH-870430NT

TERRI LYNN DUNN (hereafter Dunn) File No. BPH-870430NU

ROSE CITY RADIO, INC. (hereafter Rose) File No. BPH-870430NV

CARDINAL COMMUNICATIONS, INC. (hereafter Cardinal) File No. BPH-870430NW

H. PHILLIP HOOK AND MARY MICHELLE CHAPIN D/B/A RADIO PARTNERS OF EAST TEXAS LTD., A TEXAS LIMITED PARTNERSHIP (hereafter Partners) File No. BPH-870430NX

ELEANOR MADELINE BURKITT JENSEN (hereafter Jensen) File No. BPH-870430NY

ROGERS VENTURE ENTERPRISES, INC. (hereafter Rogers) File No. BPH-870430NZ

COUNSELLOR FM LIMITED PARTNERSHIP (hereafter Counsellor) File No. BPH-870430OA

SCOTTCOM, INC. (hereafter Scottcom) File No. BPH-870430ON

For Construction Permit for a New FM Station on Channel 281C2 (104.1 MHz) in Tyler, Texas.

HEARING DESIGNATION ORDER

Adopted: May 27, 1988; Released: June 14, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *FPS.* Jeffrey Lynn Ward is a ten percent general partner of FPS. Information has come to the Commission's attention in connection with the Bureau's participation in the Huntington, Texas FM proceeding, MM Docket No. 88-208, indicating that Ward may have participated in the filing of an allegedly fraudulent application (File No. BPH-870219MB) using the name of "Jerry Swink," a deceased individual. It further appears that Ward was arrested in Texas on May 16, 1984, for one felony count of possession of dangerous drugs, was convicted and sentenced to two years imprisonment, and was paroled. In response to Section II, Item 4(a) of FCC Form 301 (1982 ed.), however, FPS answered "No." Accordingly, appropriate issues will be specified below.[1]

3. FPS petitioned for leave to amend its application on September 14, 1987, and January 4, 1988. The accompanying amendments were filed after the last date for filing minor amendments as of right. Under 47 C.F.R. § 1.65, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *FPS and Hine.* FPS and Hine each propose to mount their respective antennas on an existing tower at coordinates 32§ 29' *40* " NL 95§ 28' *55* " WL. Each applicant indicates the site elevation of the specified transmitter site to be 622 feet (189.6 meters). However, staff study of the 7.5 minute map determined the site elevation at these coordinates to be 580 feet (176.8 meters). While FPS' application is silent as to this inconsistency, Hine explains it by stating that the 622 feet figure was determined from an actual survey made by the tower owner at the time of the tower's construction. FPS provides in its engineering statement (as its Exhibit 7A) a copy of a letter from the tower's owner which specified the coordinates as 32§ 29' *40* " NL 95§ 28' *55* " WL, which agree with the instant applications. However, FPS also provides (as its Exhibit 8) a copy of the original FAA Form 7460-1, which indicates that airspace clearance was granted for a 427 foot (130.15 meter) structure at coordinates 32§ 29' *34. 5* " NL 95§ 28' *50* " WL. We note that the elevation at this site is specified as 622 feet (189.6 meters), which also matches the site

elevation plotted by the staff on the topographical map. Consequently, it is clear that the site elevation and/or the coordinates for the existing tower are in error. Based on the information provided in the respective applications, we are unable to resolve the noted discrepancies. In addition, we note the existence of a third inconsistency in that FPS lists the existing height above ground level of the tower structure as 130.15 meters while Hine specifies 128 meters.

5. We find that the site elevation discrepancies do not render FPS' and Hine's applications unacceptable for filing since the use of either value, 622 feet/189.6 meters or 580 feet/178.6 meters, would not cause the proposals to violate the maximum power/antenna height provisions of 47 C.F.R. § 73.211. Additionally, no other rule sections are violated by the site elevation inconsistencies. The coordinate and tower height discrepancies also do not render the applications unacceptable for filing, Because FPS and Hine clearly propose to locate on an existing tower of a Commission licensee, and because specific reference is made to this tower in various places in the applications in question, the staff could, "drawing on the application[s] as a whole," confidently verify existence of this tower by taking official notice of the tower's record in the Commission's files for the licensed co-located facility. However, since the validity of this data is called into question by FPS' and Hine's respective applications, we will require FPS and Hine to amend their applications to eliminate the above-noted discrepancies within 30 days of the release of this Order. In addition, since data on file with the Federal Aviation Administration may be erroneous, an air hazard issue will be specified against these applicants.

6. *Reynolds*. On July 21, 1987, Reynolds filed an amendment to its application to correct the height of its antenna radiation center above ground level from 100 meters to 101 meters. Reynolds states that the erroneous original value of 100 meters was caused by the cumulative roundoff effects of converting feet to meters. As a consequence of this correction, the height of the radiation center above mean sea level (RCAMSL) was increased by one meter to 290 meters AMSL. Reynolds failed to note this and the resulting discrepancy between its RCAMSL in Section V-B and the one derived from its tower sketch. However, we find that the one meter discrepancy does not render the application, as amended, unacceptable for filing since the change did not alter the antenna height above average terrain nor cause the proposal to violate any rule section. Accordingly, Reynolds will be required to submit a corrective amendment to its application to eliminate the radiation center discrepancy to the presiding Administrative Law Judge within 30 days of the release of this Order.

7. In exhibit 2 to its application, Reynolds reports that its shareholders, Richard Reynolds and Dale Palmer, own an interest in and are employed by Reynolds-Palmer Media, Inc., licensee of KLSB-FM, Winfield, Texas, and that they will divest their interest and terminate their employment should Reynolds' instant application be granted. A condition reflecting this commitment will be specified below.

8. *Reynolds and Rose*. In response to Section VI, FCC Form 301, Reynolds and Rose indicate that they will each employ five or more full-time employees. Pursuant to 47 C.F.R. § 73.2080(c), they are required to submit an Equal Employment Opportunity (EEO) Program in compliance with the provisions of the rule as set forth in FCC Form 396A, the five-point Model EEO Program. However, the EEO programs submitted by Reynolds and Rose are deficient for their failure to identify specific sources of recruitment specializing in minority candidates. Accordingly, Reynolds and Rose will each be required to file amended EEO programs with the presiding Administrative Law Judge within 30 days of the release of this Order.[2]

9. *Rose*. In its response to Section II, Item 5 of FCC Form 301 (1985 ed.), Rose reports only 51% of its voting stock ownership. Accordingly, Rose will be required to complete its response in an amendment to its application filed with the presiding Administrative Law Judge within 30 days of the release of this Order.

10. *Partners*. In its application and amendments, Partners reports that its principals, H. Phillip Hook and Mary Michelle Chapin, are associated with Educational Radio Foundation of East Texas, Inc., licensee of KVNE(FM), Tyler, Texas, and applicant for a new noncommercial educational station at Tyler, Texas (File No. BPED-860924MA), and that they will terminate their positions and sever all ties therewith should the instant application be granted. Additionally, Partners reports that H. Phillip Hook is a broadcast consultant for Buford Television, Inc., licensee of KLTV(TV), Tyler, Texas, and that he will terminate this position and sever all ties therewith should the instant application be granted. Conditions reflecting these commitments will be specified below.

11. *Counsellor*. In exhibit 2 to its application, Counsellor reports that its general partner, Donald Ray Clement, is an employee of Big Thicket Broadcasting Co. of Texas (Big Thicket), licensee of KTYL-AM/FM, Tyler, Texas. The exhibit fails to specify, however, in what capacity Clement is employed. Since the employment represents a potential violation of the Commission's cross-interest policy, Counsellor will be required to file an amendment with the presiding Administrative Law Judge, within 30 days of the release of this Order, providing a job description and detailing Clement's position with Big Thicket. Upon evaluation of the requested amendment, the Judge will then determine whether Counsellor's application represents a potential violation of the cross-interest policy.

12. *Other matters*. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

13. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

14. Accordingly, IT IS ORDERED, That, pursuant to 47 U.S.C. § 309(e), the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1(a). To determine the facts and circumstances surrounding the participation of Jeffrey Lynn Ward in the filing and prosecution of the application of

"Jerry Swink" for a construction permit for a new FM station in Huntington, Texas (File No. BPH-870219MB; MM Docket No. 88-208).

1(b). To determine, in light of the evidence adduced pursuant to Issue 1(a) above, whether Jeffrey Lynn Ward misrepresented facts, lacked candor, and/or abused the Commission's processes in connection with the filing and prosecution of the application of "Jerry Swink" for a construction permit for a new FM station in Huntington, Texas (File No. BPH-870219MB; MM Docket No. 88-208).

1(c). To determine whether FPS violated 47 C.F.R. § 73.3514 by failing to disclose in response to Section II, Item 4(a) of FCC Form 301 (1982 ed.), the felony conviction of Jeffrey Lynn Ward.

1(d). To determine, in light of the evidence adduced pursuant to Issue 1(c) above, whether FPS misrepresented facts and/or lacked candor by failing to disclose in response to Section II, Item 4(a) of FCC Form 301 (1982 ed.), the felony conviction of Jeffrey Lynn Ward.

1(e). To determine, in light of the evidence adduced pursuant to Issues 1(a) through 1(d) above, whether FPS is basically qualified to become a Commission Licensee.

2. To determine whether there is a reasonable possibility that the tower heights and locations proposed by the following applicants would constitute a hazard to air navigation: FPS and Hine.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

15. IT IS FURTHER ORDERED, That both the burden of proceeding and the burden of proof on Issues 1(a) through 1(e) are placed on FPS.

16. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by FPS ARE GRANTED and the corresponding amendments ARE ACCEPTED to the extent indicated in paragraph 3 hereinabove.

17. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

18. IT IS FURTHER ORDERED, That, in accordance with paragraphs 4-6, 8-9, and 11 hereinabove, the following applicants shall submit amendments to their applications to the presiding Administrative Law Judge within 30 days of the release of this Order: FPS, Hine, Reynolds, Rose, and Counsellor.

19. IT IS FURTHER ORDERED, That, in the event of a grant of Reynolds' application, the construction permit shall be conditioned as follows:

Prior to the commencement of program test authorization, permittee shall certify to the Commission that Richard Reynolds and Dale Palmer have divested their interest in and terminated their employment with Reynolds-Palmer Media, Inc., licensee of KLSB-FM, Winfield, Texas.

20. IT IS FURTHER ORDERED, That, in the event of a grant of Partner's application, the construction permit shall be conditioned as follows:

Prior to the commencement of program test authorization, permittee shall certify to the Commission that H. Phillip Hook and Mary Michelle Chapin have terminated their employment and severed all ties with Educational Radio Foundation of East Texas, Inc., licensee of KVNE(FM), Tyler, Texas, and applicant for a new noncommercial educational FM station in Tyler, Texas. Additionally, permittee shall certify to the Commission that H. Phillip Hook has terminated his employment with Buford Television, Inc., licensee of KLTV(TV), Tyler, Texas.

21. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

22. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to 47 C.F.R. § 1.221(c), in person or by attorney, within 20 days of the mailing of this Order, not later than July 5, 1988, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

23. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to 47 U.S.C. § 311(a)(2) and 47 C.F.R. § 73.3594, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] Both the burden of proceeding and the burden of proof will be placed on FPS.

[2] In the event that an applicant listed an organization in its EEO program as a recruitment source which is unfamiliar to the staff but which would satisfy our EEO requirements, the applicant may amend its EEO program to describe that organization.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMTEL CORPORATION,
Complainant,

v. File No. E-87-38

THE MOUNTAIN STATES
TELEPHONE AND TELEGRAPH
COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted June 2, 1988; Released June 14, 1988

By the Chief, Common Carrier Bureau:

1. On February 10, 1987, the Amtel Corporation (Amtel), an interstate resale carrier, filed a formal complaint against the Mountain States Telephone and Telegraph Company (Mountain States). It alleges that Mountain States has improperly interpreted Section 6.7.7 of Mountain States Tariff F.C.C. No. 1 relating to the calculation of access charges. The sole thrust of Amtel's argument is that, when an exchange carrier does not have measurement capability in an end office and a carrier-customer does have such capability in its system, if the exchange carrier applies a flat- rate billing surrogate, it is a violation of Section 201(b), 47 U.S.C. § 201(b). Mountain States has moved to dismiss the complaint.[1] As discussed more fully below, we grant Mountain States' motion to dismiss.

I. BACKGROUND

2. Amtel has subscribed to interstate access service from Mountain States through, among other locations, Mountain States' Brigham City, Utah end office until it voluntarily terminated service there on June 13, 1986.[2] At all times relevant hereto, the Brigham City end office did not have the capability of measuring originating or terminating access minutes. Mountain States therefore billed Amtel on the basis of an assumed Minutes of Use (MOU) surrogate pursuant to its Tariff F.C.C. 1, § 6.7.7. Amtel argues that this calculation was improper and resulted in billings that were unreasonably high, against public policy, and violative of Sections 201 and 203 of the Communications Act, 47 U.S.C. § 201, 203, and the Sherman Act, 15 U.S.C. § 1. Amtel also argues that Mountain States' tariff is ambiguous. Section 6.7.7 provides:

> Assumed minutes [surrogate figures of usage] are used for FGA, FGB and DID Access Services which originate or terminate in end offices not equipped with measurement capabilities.

Amtel argues that this provision requires Mountain States to bill Amtel on actual MOU as measured by Amtel's switching equipment. Because of its position, Amtel paid Mountain States only an amount based on its own calculation of actual MOU, which was lower than the charge provided for in Mountain States access tariff.

II. DISCUSSION

3. The Commission has issued numerous orders in connection with its *Access Charge* decisions [3] which concluded that the use of a flat-rate charge in end offices lacking measuring capability did not violate the Communications Act and was in the public interest. Interstate access was originally provided under a tariff known as Exchange Network Facilities for Interstate Access (ENFIA) whereby interexchange carriers were charged a flat rate for use of the local exchange network based on the number of local business lines subscribed to by the carrier. In the *Second Reconsideration Order* the Commission concluded that the ENFIA rates did not properly compensate the local exchange carriers (LECs) for the use of their networks and established a system of access charges that would be based on the actual monthly usage of each access line. 97 FCC 2d at 861-62. However, the Commission also recognized that reconfiguration of the network to accommodate timing equipment would require a reasonable amount of time to implement in order to minimize the substantial financial impact associated with conversion of central offices to equal access. Accordingly, the Commission established a transitional schedule of access charges that would apply until such time as an end office was converted to equal access and had measurement capability. *Id.* Under this transitional schedule, the Commission prescribed that an MOU surrogate of 9,000 minutes per line per month should be used. *Id.* This was based on an analysis of average usage figures submitted by parties in the Access Charge proceeding.

4. In its *Third Reconsideration Order, Part I*, the Commission reviewed the rationale behind the transitional schedule and the use of the surrogate and stated:

> [W]e viewed it as the best method for avoiding a very abrupt increase in access costs for those OCCs with per line usage levels that substantially exceeded the industry average. While we recognized that the use of a per line charge might disadvantage new entrants, we believed that the experience with the ENFIA tariffs, which used per line charges for all elements, indicated that this rate structure would not create a significant entry barrier.

101 FCC at 1231. In order to further promote competition in the marketplace, the Commission, effective January 1, 1986, ordered that local exchange carriers employ a usage-based rate structure in central offices having measuring capability but permitted continued use of the MOU surrogate for service through those end offices not yet converted to equal access. In general, unconverted central offices have traffic levels too small to warrant rapid conversion without financially burdening ratepayers. *Id.* at 1232. In the *Fourth Reconsideration Order*, 50 Fed. Reg. at 43711, the Commission did not require the LECs to retrofit such end offices in order to make such measurement possible and affirmed its policy of permitting exchange carriers without measurement capability in an end office

to bill access charges on a flat-rate basis. Customers desiring usage-based billing were entitled to utilize central offices where equal access conversions had taken place.

5. The purpose of the Commission-prescribed surrogate was to provide a basis on which to determine charges for service through end offices without measurement capability. *See* 97 FCC 2d at 861. The 9,000- minute surrogate is based on an *average* usage in end offices with measurement capability, and the Commission has reaffirmed its conclusion that it is a reasonable estimate of industry-wide usage in end offices that do not have measurement capability. *See , e. g., NECA Transmittal No. 60*, FCC 88-35 (released February 16, 1988). Since this surrogate is representative of average usage, the Commission acknowledged that some customers charged on the basis of the surrogate would in reality have higher actual minutes of use and some would have lower. However, as the Commission said in the *Third Reconsideration Order, Part I* :

> None of the parties have demonstrated that the actual average usage rate is different from the figure we selected or have suggested an alternative figure we might use. Merely identifying a particular OCC whose usage is above or below the 9000 minutes of use per line does not impeach the reliability of the figure selected. Indeed, if anything, the reliability of our selection is further supported by the fact that the parties can point to OCCs whose usage levels fall on each side of the estimated average. Therefore, while 9000 minutes per line is only an estimate of OCC average use, we are not persuaded that this estimate is unreasonable or that another figure would be more reasonable. Accordingly, in the absence of any relevant evidence in this record undermining our selection, we believe changes to the estimated average used in the flat-rate calculation are not necessary.

101 FCC 2d at 1235. It is clear that no evidence has been presented in this proceeding to call this Commission precedent into question. Moreover, it should be noted that the Commission has repeatedly focused on the question whether the telephone company's serving end office had measurement capability and has always considered that the telephone company is the proper measuring entity, not the customer. *See , e. g., Annual 1985 Access Tariff Filings*, 2 FCC Rcd 1416 (1987). Additionally, the Commission's *Access Charge* decision specifically refers to "exchange company measurement of non-premium traffic"[4] and confirmed that "we have permitted exchange carriers without measurement capability in their end offices to bill all their FGA customers on a flat-rate basis."[5] Thus, it is clear that the Commission intended measurement to occur exclusively in the LEC end office and that the Mountain States tariff clearly reflects this intention.[6]

6. Although Amtel argues in its Brief[7] that Mountain States' tariff is ambiguous with regard to when the surrogate would apply, we conclude that this argument is without merit. Section 6.7 of its Tariff F.C.C. No. 1 states that, beginning January 1, 1986, feature group A (FGA) and feature group B (FGB) access would be billed on a usage-sensitive basis except that a flat rate would apply where usage cannot be measured by "our end office equipment and tandems." Furthermore, all resellers and interexchange carriers (IXCs) were specifically informed of this in a notice mailed December 19, 1985. *See* Brief of Mountain States, Attachment E.

7. We further note that the complainant has alleged a violation of the Sherman Act, claiming that Amtel has been placed at a competitive disadvantage to Mountain States in the provision of interexchange service. Initially, we note that Mountain States is prohibited by the terms of the Modification of Final Judgment in *United States v. AT & T*, 552 F. Supp. 131 (D.D.C. 1982), *aff' d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983), from providing interstate, interexchange services except in certain limited locations and thus Mountain States could derive no competitive business advantage over Amtel since it is not competing in the same marketplace. Therefore, we fail to comprehend Amtel's antitrust theory and must reject it.

8. It is clear that Mountain States has billed Amtel in accordance with Commission rules and accepted tariff construction. Since Amtel has not alleged sufficient facts to warrant a finding, if proven, that Mountain States' conduct was in violation of the Communications Act, we grant Mountain States' motion to dismiss.[8]

9. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the rules, 47 C.F.R. § 0.291, that Mountain States' Motion to Dismiss the complaint IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] Also before us are Mountain States' answer to the complaint, Amtel's opposition to the Motion to Dismiss and Memorandum in Support, Mountain States' Reply and briefs by both parties concerning issues raised in the proceeding.

[2] We note that Mountain States argues that Amtel's complaint is defective because Tariff F.C.C. No. 1, § 6.7.7, on which the complaint is based, did not become effective until one and one-half months after Amtel disconnected service. We reject this argument because there were other Mountain States end offices through which Amtel was served after the tariff became effective that had no measurement capability.

[3] MTS and WATS Market Structure, Third Report and Order, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983), *modified on reconsideration*, 97 FCC 2d 682 (1983) (*First Reconsideration Order), modified on further reconsideration*, 97 FCC 2d 834 (9984) (*Second Reconsideration Order), aff' d and remanded in part NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985), *modified* on further reconsideration, 101 FCC 2d 1222 (1985) (Third Reconsideration Order, Part I), 50 Fed. Reg. 18249 (1985) (Third Reconsideration Order, Part II), aff'd on further reconsideration, 50 Fed. Reg. 43707 (1985) (Fourth Reconsideration Order), appeal docketed, U.S. Telephone Inc. v. FCC, No. 84-1115 (D.C. Cir. Mar. 23, 1985), appeal dismissed, (D.C. Cir. Mar. 12, 1986).

[4] Third Reconsideration Order, Part I, 101 FCC 2d at 1232, n.39.

[5] Fourth Reconsideration Order, 50 Fed. Reg. at 43711-12.

[6] Assuming, arguendo, that customers would reliably report such information, it would place the LEC at financial risk if customers that had traffic exceeding average MOU requested billing at the average while customers utilizing less than the average requested billing for actual MOU. Under such circumstances, it would be impossible to recoup its investment and earn a fair rate of return.

[7] Amtel Brief at 3.

[8] It is improper under accepted practice for Amtel to have withheld portions of the charges billed to it by Mountain States while it challenged the reasonableness of the tariff. See, e.g., Mocatta Metals Corp. v. ITT World Communications Inc., 42 FCC 2d 453, 454-55 (1973). Mountain States is free to pursue the avenues available to it to recover its lawfully billed charges.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-112

In the Matter of

Amendment of Part 74 of the
Commission's Rules to Provide for
Satellite and Terrestrial
Microwave Feeds to Noncommercial
FM Translators

ORDER

Adopted: June 6, 1988; Released: June 6, 1988

By the Chief, Mass Media Bureau

1. On May 31, 1988, National Public Radio and the National Federation of Community Broadcasters (joint parties) filed a motion requesting an extension of time within which to file comments on the *Further Notice of Proposed Rule Making* (*Further Notice*), FCC 88-125, released April 15, 1988.[1] The joint parties requested an extension of three weeks, until June 27, 1988, to file initial comments in this proceeding.

2. On June 2, 1988, it came to the Commission's attention that a summary of the *Further Notice* inadvertently was not published in the *Federal Register* in a timely manner. To correct this oversight, that document will be published in an expedited manner. Due to the delay in *Federal Register* publication, the period for filing initial comments has been extended to July 11, 1988, with reply comments due August 10, 1988. This comment period supercedes the comment schedule initially set in the released version of the *Further Notice*.

3. In view of the extension of the comment period given all interested parties to participate in the rule making proceeding, the Motion for Extension of Time filed by the joint parties will be dismissed as moot.

4. Accordingly, IT IS ORDERED, that the Motion for Extension of Time filed by National Public Radio and the National Federation of Community Broadcasters IS DISMISSED AS MOOT.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

FOOTNOTE

[1] The comment schedule in the released version of the *Further Notice* set June 6, 1988, and June 21, 1988, as the period when initial and reply comments were due.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Arvig Telephone Company, ENF-88-7
ENMR Telephone Cooperative,
Farmers Telephone Company,
Fort Bend Telephone Company,
Hopper Telecommunications Company, Inc.,
Jefferson Telephone Company, Inc.,
Rural Telephone Company,

On Requests for Confidentiality.

ORDER

Adopted: May 24, 1988; Released: May 26, 1988

By the Chief, Common Carrier Bureau:

1. The Common Carrier Bureau has received requests for onfidentiality from seven local exchange companies (LECs) regarding data provided to the National Exchange Carrier Association (NECA) and subsequently filed with the Commission pursuant to Section 36.613 of the Rules, 47 C.F.R. § 36.613. The information at issue, in the form of a data tape and paper copy synopsis compiled by NECA, identifies costs related to local exchange loops. For the reasons set forth below, the requests for confidentiality are denied.

2. Every year local exchange companies are required to submit to NECA data which are used to calculate local loop costs and support levels for the Universal Service Fund (USF). 47 C.F.R. § 36.611. NECA, in turn, must file its calculations with the Commission on a yearly basis. 47 C.F.R. § 36.613. The NECA submission is reviewed by Commission staff in connection with our oversight of the USF and the program to monitor the impact of Commission and CC Docket 80-286 Joint Board[1] decisions which involve the operation of the USF. NECA files its study results under a limited claim of confidentiality. Pursuant to NECA's request contained in its standard contract with the LECs, the Commission holds the entire submission as confidential for a specified time period to permit individual LECs desiring confidential status for their company's data to file their own requests with the Commission. After expiration of NECA's request, the Commission treats all data as routinely available unless covered by a LEC's confidentiality claim. In the instant case, we have received confidentiality claims from the following LECs: Arvig Telephone Company; ENMR Telephone Cooperative; Farmers Telephone Company; Fort Bend Telephone Company; Hopper Telecommunications Company, Inc.; Jefferson Telephone Company, Inc.; and Rural Telephone Company.

3. The Commission may withhold proprietary business data under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4) and Sections 0.457(d) and 0.459 of the Commission's Rules, 47 C.F.R. §§ 0.457(d) and 0.459. Any person submitting information to the Commission may request that such data not be made routinely available by stating the reasons for the request and the facts upon which those reasons are based. 47 C.F.R. §§ 0.459(a) and (b). Parties seeking confidentiality in such a manner must demonstrate by a preponderance of the evidence that nondisclosure is consistent with the provisions of the FOIA. 47 C.F.R. § 0.459(d). The pertinent portion of Exemption 4 of the FOIA permits the withholding of confidential commercial or financial information. While the cost information at issue surely fits within usual and commonly understood categories of commercial and financial data, it is not necessarily confidential within the meaning of Exemption 4. Information is not considered confidential simply because the originator or submitter considers it so. Instead, in applying Exemption 4 protection, courts have applied an objective test to determine confidentiality. Under this test, material may be treated as confidential if disclosure is likely to: (1) impair the government's ability to obtain necessary information in the future; or (2) substantially harm the competitive position of the submitter. *National Parks and Conservation Ass' n v. Morton*, 598 F.2d 765, 770 (D.C. Cir. 1974) [*National Parks I*].

4. The Common Carrier Bureau has previously considered the application of this element of Exemption 4 to the local loop cost calculations submitted by NECA for 1983-1985. *See* Letters from Chief, Common Carrier Bureau to Richard A. Rocchini (July 21, 1986; Sept. 25, 1986). The Bureau found that such data could not be properly withheld under either prong of the *National Parks I* test. In the instant case, we have not been presented with any information in support of nondisclosure that was not considered previously and rejected. We also have not received any evidence of an altered marketplace which would affect our judgments regarding competitive sensitivity. In fact, none of the LECs seeking confidential treatment have even recognized, much less discussed, the established standards for non- disclosure pursuant to Exemption 4. We remind these carriers, along with other parties who might come before the Commission with requests for confidentiality, that it is the submitter's responsibility to provide adequate evidence to support a claim of confidentiality. *See* 47 C.F.R. §§ 0.459(b) and (d). The Commission is authorized to dismiss without consideration casual requests which do not both state the reasons for nondisclosure and provide supporting factual data. 47 C.F.R. § 0.459(c). In addition to our rule requirements, NECA's instructions to the LECs emphasized the carriers' obligation to present a case for nondisclosure consistent with the provisions of the FOIA. *See* Letter from Joseph R. Naset, NECA, to all exchange carriers (Sept. 11, 1987). Although we remain concerned by the paucity of documentation offered in support of the carriers' confidentiality claims, our decision to order release of NECA's calculations does not rest solely upon their failure to make an adequate showing. Instead, we have conducted an independent analysis of the material at issue to determine whether it qualifies for confidential treatment under the criteria set by *National Parks I*.

5. The first prong of the *National Parks I* test does not apply here. The Commission has statutory authority to require the submission of information necessary to fulfill its regulatory responsibilities. *See* 47 U.S.C. §§ 151, 154(i)-(j), 201-205, 218 and 403. As noted above, our Rules specifically require annual data submissions by the

LECs to NECA and by NECA to the Commission. *See* 47 C.F.R. §§ 36.611 and 36.613. While a legal obligation to provide the government with information does not necessarily preclude application of the impairment aspect of Exemption 4, impairment is generally unlikely when submission is mandatory and the material to be filed is clearly listed in explicit detail. *See Save the Dolphins v. Department of Commerce*, 404 F. Supp. 407 (N.D. Cal. 1975); *Neal - Cooper Grain Co. v. Kissinger*, 385 F. Supp. 769, (D.D.C. 1974). In any event, we do not realistically believe that disclosure here would diminish our ability to obtain necessary information in similar situations in the future. It is improbable that our decision to release the material currently at issue would prompt either NECA or its participating LECs to ignore or challenge the data collection provisions contained in our Rules. None of the carriers requesting confidential treatment have suggested that such impairment would be likely to occur.

6. The second prong of the *National Parks I* test requires a showing that (1) the submitting party faces competition; and (2) substantial competitive harm would likely result from disclosure. *National Parks and Conservation Ass' n v. Kleppe*, 547 F.2d 673, 679 (D.C. Cir. 1979) [*National Parks II*]. Conclusory allegations of competitive harm do not satisfy this test. *Id.* at 680. However, neither a showing of actual injury nor a sophisticated economic analysis are necessary for the application of Exemption 4. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1291 (D.C. Cir. 1983). Rather, the "likelihood of substantial competitive injury is all that need be shown." *Gulf and Western Industries, Inc. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979).

7. We have no indication that the LECs requesting confidentiality face actual or incipient competition. Even if a competitive threat does exist, the NECA data would not be especially helpful to an entity seeking to divert business from a particular LEC. The filing does not include information which could be used by competitors to predict the profitability of particular service offerings and, therefore, facilitate erosion of a LEC's market share. The LECs' tariffed rates for access, local exchange service and other services, such as intra-LATA toll, will be the primary factor in a bypasser's, shared tenant service provider's or interexchange carrier's decision to enter a market since these are the prices against which the new entity must compete. Moreover, these prices are already available to the public pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203. Given the regulatory requirements which exist concerning the rates which LECs charge for access, local service and intra-LATA toll service, it does not appear that this information would give a competitor a significant advantage over a LEC. In any event, study area-wide loop cost data will provide such a competitor with little useful information since it does not show the actual costs of providing a particular service, serving particular customers or installing new local loops. In addition, as noted earlier, the price that an exchange carrier charges for an interstate common carrier communications service is a matter of public record, and to alter that price for competitive purposes, an exchange carrier must supply appropriate notice and documentation. *See generally* 47 C.F.R. § 69.1 *et seq.*

8. Moreover, in the instant case, only one company, Jefferson Telephone Co., Inc. (Jefferson), has provided a rationale for its confidentiality request. Jefferson states that it has not been provided with NECA's submission and is unable to verify the data. However, Jefferson does not tie this concern to the likelihood of substantial competitive harm. Moreover, if NECA's submission is made publicly available, Jefferson can certainly review the data pertinent to its operations and comment upon its accuracy. In any event, public disclosure does not affect Jefferson's ability to challenge the accuracy of NECA's calculations if it so wishes.

9. Finally, as recognized by the Bureau's previous rulings on the public availability of NECA local loop cost data, public interest factors favor disclosure of the NECA submission. We have found that information regarding computation and distribution of the USF is valuable in analyzing the reasonableness of the program and that, since ratepayers ultimately bear the costs of such assistance, the public should be fully informed of the specific data from which the amount of assistance is derived. These concerns continue to be valid and have been formally recognized by the Commission in its adoption of the recommendation of the CC Docket No. 80-286 Joint Board to establish a monitoring program to track the effects of recent decisions regarding subscriber line charges, lifeline assistance programs, high cost assistance and the common line pooling systems. *Establishment of a Program to Monitor the Impact of Joint Board Decisions*, CC Docket No. 87-339, 2 FCC Rcd 5266 (1987) (*Monitoring Order*). This program established a series of quarterly monitoring reports to reflect information collected by the CC Docket No. 80-286 Joint Board staff pertaining to eight categories of data, including costs and high cost assistance, which includes the information contained in NECA's submission. The *Monitoring Order* anticipates public availability of all relevant data and invites interested parties to comment upon the data presented in the reports or the monitoring procedures themselves. The open record in CC Docket No. 87-339 provides Jefferson, or any other carrier, an opportunity to file comments regarding NECA's computations. We believe the public benefit to be gained from a complete picture of the cost information employed in administration of the USF outweighs any proprietary interest any individual company would have in nondisclosure, especially since we have already determined that the information at issue is of a negligible competitive value.

10. Therefore, IT IS ORDERED that the confidentiality requests ARE DENIED. Pursuant to Section 0.459(g) of the Commission's Rules, 47 C.F.R. § 0.459(g), the LECs seeking confidentiality may, within five working days, seek Commission review of the Bureau's decision to release the NECA local loop cost data. *See* 47 C.F.R. § 1.4.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, and Establishment of a Program to Monitor the Impact of Joint Board Decisions, CC Docket Nos. 78-72 and 80-286, 2 FCC Rcd 3298 (1987).

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 88-281

In the Matter of

Amendment of Part 15, Subpart C, of the Commission's Rules to require advisory Labeling of Radio Communications Receivers in light of the Electronic Communications Privacy Act of 1986.	RM-5836

NOTICE OF PROPOSED RULE MAKING

Adopted: May 27, 1988; Released: June 14, 1988

By the Commission:

INTRODUCTION

1. By this action, the Commission proposes to amend its rules to require advisory labeling of scanning radio receivers and manually tuned radio receivers that are intended for use by the general public and are capable of receiving communications protected by the Electronics Communication Privacy Act of 1986 (ECPA).[1] The label would alert users to the existence and intent of the ECPA.

BACKGROUND

2. The ECPA was enacted expressly to extend the protections of the Omnibus Crime Control and Safe Streets Act (Safe Streets Act), 18 U.S.C. Sections 2510 - 2520, to radio communications. Prior to enactment of the ECPA, the degree to which the interception of radio communications was prohibited was unclear. Generally, the Safe Streets Act, as modified by the ECPA, now prohibits, unless one party consented or a court order has been obtained, the interception of all forms of common carrier communications, except cordless telephones and tone-only paging communications, and any non-common carrier or private radio communications when they are encrypted, scrambled, or "transmitted using modulation techniques whose essential parameters have been withheld from the public . . . ."[2]

3. On March 31, 1987 Regency Electronics (Regency) submitted a petition for rule making requesting that the Commission amend Part 15 of its rules to require advisory labeling of scanners[3] . Regency's petition stated that the purpose of a rule requiring labeling would be to help educate the public that certain uses of scanners could be illegal in light of the ECPA. Regency proposed the following wording for the label:

> "Improper use of this device may violate the provisions of the Electronic Communications Privacy Act of 1986 through intentional unauthorized interception of protected radio communications."

The petition was placed on public notice on April 15, 1987.

4. Some commenters such as South West Bell Mobile (SWBM), the Cellular Telecommunications Industry Association (CTIA), McCaw Communications (McCaw), and the Cellular Telecommunications Division of Telocator Network of America (Telocator), argue that labeling is an insufficient means of assuring compliance with the ECPA. They suggest that the scanner manufacturers should be required to "block" or prevent by technical means, the reception of cellular radio communications. The Tandy Corporation states that it does not manufacture or sell a scanner capable of receiving transmissions from cellular telephones and suggests that other companies delete the cellular frequencies as well. However, Tandy does support labeling scanners capable of receiving other protected communications. GTE supports labeling scanners and feels a more comprehensive proceeding on the provisions of the ECPA is necessary. The Association of North American Radio Clubs (NARC) and the Scanner Association of North America (SANA) and Communications Electronics, Inc. argue against restricting the frequency capabilities of scanners. Although they generally support the advisory labeling of scanners, they recommend that, in addition to the label, more information concerning the provisions of the ECPA should be supplied with scanners.

DISCUSSION

5. The ECPA places no direct obligation upon the Commission. It does not, as some commenters appear to have suggested, seek to make the Commission a guarantor of the protections afforded by the Act. Although the ECPA prohibits interception of certain classes of communications, the frequencies on which these communications are transmitted can be used for unprotected transmissions as well. In Docket 87-390[4] we have proposed to permit cellular radio licenses to use a portion of their spectrum flexibly, for purposes other than traditional cellular radiotelephone communications, and quite possibly for communications not protected by the ECPA[5] . The Commission has already allocated 2 MHz of spectrum to general flexible use, which may include both protected and unprotected communications. Thus, the suggestion that the Commission require that reception of certain frequencies be blocked or filtered is not a practical one.

6. The ECPA does not require the labeling of receiving equipment. Nevertheless, the Senate report that accompanies the ECPA states:

> It has been suggested that the Federal Communications Commission consider labeling requirements on cellular telephones, radio scanning equipment and private satellite video communications. The Commission might consider the feasibility of requiring that cellular telephones be labeled to indicate that cellular calls are radio-based communications, and as such, portions of the communication may be intercepted by available scanning equipment and of requiring that scanning equipment be labeled to indicate that the intentional interception of protect-

ed communications could be a Federal criminal violation. . . . (S. Rep. No. 541, 99th Cong., 2d Sess. 8 (1986)).

This statement seems to indicate the apparent sense of the Senate that the labeling of devices might be an acceptable method of fostering compliance with the law. To be sure, as some commenters point out, a warning label is no guarantee that the law will not be broken. Indeed we recognize that, in some instances, a warning label, by calling attention to a prohibited activity, might encourage it. Nevertheless, we agree with those who argue that people should be made aware of the law.

PROPOSAL

7. A label appears to be the simplest and least burdensome method of advising scanner users of the ECPA. In addition, we realize that manually tuned receivers are equally capable of intercepting protected communications. Therefore we are proposing that the advisory label be required regardless of the type of tuning employed. A label would be required on all scanning radio receivers and manually tuned radio receivers intended for use by the general public and capable of receiving protected communications. Comments on the label proposed by the Petitioner or a label with alternative language is requested. We also request comment on an appropriate conspicuous location for the label, i.e. whether the label should be located on the device itself or its container. In addition, interested parties may wish to comment on the possibility of requiring not only a label but some accompanying instructive material pointing more specifically to communications intended to be protected under the ECPA, e.g., cellular radiotelephone conversations. It must be emphasized that we are not suggesting that lengthy legal opinions accompany each scanner. Rather, we envision some cautionary explanation inherently not suited to the confines of a label. The labeling requirement would apply to equipment manufactured some number of months after the effective date of a Report and Order in this Docket. We request comments on an appropriate time interval.

ADMINISTRATIVE PROCEDURES

8. Under the procedures set out in Section 1.145 of the rules, 47 CFR Section 1.415, interested persons may file comments on or before **August 5, 1988** and reply comments on or before **August 22, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature of the source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

9. In accordance with the provisions of Section 1.419 of the rules and regulations, 47 CFR Section 1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington D.C.

10. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, which ever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

11. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of the same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

12. The proposal contained herein has been analyzed for conformity with the Paperwork Reduction Act of 1980, as amended, and found to impose a labeling requirement on the public. However, this labeling requirement is not a collection of information as defined in 5 CFR 1320.7(c) and is therefore exempt from the requirements of the Paperwork Reduction Act. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 603, the Commission's initial analysis is as follows:

I. *Reason for action*

This action was initiated by a petition filed by Regency Electronics to amend the Commission's Rules to require a label to alert users of communication receivers of the existence of the ECPA.

II. *The objective*

The Commission is proposing a requirement that radio communication receivers bear a specifically worded statement advising users that interception of communications protected by the ECPA could be unlawful.

III. *Legal basis*

The proposed amendment to the Commission's Rules, as set forth in the attached Appendix, is issued under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Alternatives

This action would affect all manufactures of scanners and general communications receivers. The cost of the proposed label is not expected to be significant. Alternatives would be to adopt no requirement whatsoever. We do not consider that option satisfactory and reject it for the reasons set forth in this notice.

V. *Record keeping and other compliance requirements*

None

13. For further information on this proceeding, contact Paul Marrangoni, Room 7336, Office of Engineering and Technology, FCC, Washington D.C., or telephone (202) 653-8107.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Secretary

FOOTNOTES

[1] Excluded from this action are radio receivers or transceivers (combined transmitter/receiver) that are marketed primarily for use in the licensed radio services. For example, cellular radiotelephones, landmobile transceivers, and aviation receivers are not subject to this action. Receivers used for the reception of broadcast transmissions, e.g., television, FM, AM receivers are also excluded from this action.

[2] U.S.C. 18 Section 2510(16)(B)

[3] As used herein the term scanning receiver or scanner means a receiver which can automatically switch among radio frequencies and is capable of stopping at and receiving a radio signal detected on a frequency.

[4] 2 FCC Rcd 6244 (1987)

[5] For example, under the cellular flexibility proposal, allocated cellular radio telephone frequencies could be used for non-common carrier purposes.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-288

In re Applications of

ECLIPSE BROADCASTING GROUP, INC.	File No. BPCT-861231KJ
ECHONET CORPORATION	File No. BPCT-870331LA
HCPA, INC.	File No. BPCT-870331LF
ALASKA 33, INC.	File No. BPCT-870407KF

For Construction Permit
Anchorage, Alaska

HEARING DESIGNATION ORDER)

Adopted: May 31, 1988; Released: June 15, 1988

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications to construct a new commercial television station to operate on Channel 33, Anchorage, Alaska.

2. Section II, Item 5(a), FCC Form 301, requires that Table I be completed with respect to all parties to the application. Eclipse Broadcasting Group, Inc. (Eclipse) has listed several principals, but has failed to specify each principal's percentage of ownership. Eclipse must submit an amendment specifying the percentage of ownership to the Administrative Law Judge within 30 days after this Order is released.

3. Eclipse has submitted a coverage map that does not show all of the area within the Grade B contour. Eclipse will be required to submit a complete and legible coverage map to the presiding Administrative Law Judge within 30 days after this Order is released.

4. Section IV, FCC Form 301, requires an applicant for a television station to submit, as an exhibit, a brief description, in narrative form, of its planned programming service relating to the issues of public concern facing the proposed service area. Neither Eclipse nor HCPA, Inc. has submitted such an exhibit. Accordingly, the applicants must each file an appropriate exhibit with the presiding Administrative Law Judge within 30 days after this Order is released.

5. It appears that Echonet Corporation's[1] (Echonet) contour distances listed in Section V-C, Item 15, are not correctly calculated in accordance with Section 73.684 of the Commission's Rules. Accordingly, Echonet will be required to amend its application to include corrected data in Section V-C, Item 15, new contour maps and corrected area and population figures. This amendment must be submitted to the presiding Administrative Law Judge within 30 days of the release of this Order.

6. Section 73.685(a) of the Commission's Rules requires UHF applicants to provide a predicted City Grade signal (80 dBu) over the entire community of license. Alaska 33 indicates that its proposed station would not provide the required signal to the entire community of Anchorage. It appears that approximately 10% of the population of Anchorage would not not receive the required signal level. Alaska 33 has requested a waiver of Section 73.685(a). An appropriate issue will be specified.

7. No determination has been reached that the tower height and location proposed each by HCPA and Echonet would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

8. Section 73.1030(c) of the Commission's Rules warns all applicants of the need to protect FCC monitoring stations against interference. The Commission's Field Operations Bureau (FOB) has notified each of the applicants that the predicted field strength of the signals which each applicant would place over the Commission's Anchorage, Alaska, field office was a cause of concern, but that the FOB would not object to grant of any of the applications if the grant were made subject to an appropriate condition designed to assure that operation of the successful station would not cause interference to the FOB facility. Accordingly, a grant of any of the applications will be made subject to an appropriate condition.[2]

9. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to HCPA, Inc. and Echonet Corporation, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine whether Alaska 33, Inc. complies with Section 73.685(a) of the Commission's Rules, and, if not, whether circumstance exist justifying waiver of the Rule.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. IT IS FURTHER ORDERED, That Eclipse Broadcasting Group, Inc. shall submit an amendment specifying the percentage of ownership of the principals to the presiding Administrative Law Judge, within 30 days after this Order is released.

13. IT IS FURTHER ORDERED, That Eclipse Broadcasting Group, Inc. shall submit a complete and legible coverage map to the presiding Administrative Law Judge, within 30 days after this Order is released.

14. IT IS FURTHER ORDERED, That Eclipse Broadcasting Group, Inc. and HCPA, Inc. shall each submit its response to Section IV, FCC Form 301, to the presiding Administrative Law Judge, within 30 days after this Order is released.

15. IT IS FURTHER ORDERED, That Echonet Corporation shall submit an amendment with corrected contour distances, new contour maps and corrected area and population figures, as set out in paragraph 5, *supra*, to the presiding Administrative Law Judge, within 30 days after this Order is released.

16. IT IS FURTHER ORDERED, That the late-filed amendments by Echonet Corporation will be accepted for Section 1.65 purposes only.

17. IT IS FURTHER ORDERED, That in the event of a grant of any of these applications, it will be conditioned as follows:

"The authority granted herein is subject to the condition that the field intensity from the licensee's transmitter shall not exceed 50 mV/m as measured at the Federal Communications Commission's Anchorage, Alaska, office and that, in the event of interference to monitoring, direction finding, or related operations at the Federal Communications Commission's Anchorage, Alaska, Office caused by either harmonic or spurious radiation, the licensee shall take such immediate corrective action as is necessary to eliminate the interference. This shall include responsibility for furnishing, installing, and adjusting filter circuits, shielding, or other corrective devices which may be necessary to minimize harmonic or spurious radiation. If these measures fail to eliminate interference to FCC operations caused by the presence of the licensee's signal, or if the field intensity exceeds 50 mV/m, the licensee shall immediately reduce power to the extent necessary to eliminate the interference and to comply with the field limit. After determining this lower power level, the licensee shall immediately file an application with the Commission to establish this reduced power level as the authorized power on the station instrument of authorization."

18. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

19. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to his notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

20. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Service Division
Mass Media Bureau

FOOTNOTES

[1] The deadline for filing amendments to the Echonet Corporation application was May 20, 1987 (B" cut-off date). On December 18, 1987, February 16, 1988, and April 26, 1988, Echonet filed amendments to its application which update other media interests of the applicant and its principals. The amendments will be accepted for Section 1.65 purposes only.

[2] Alaska 33 filed an amendment on July 24, 1987, which reduces the *predicted* field strength at the FOB monitoring station below 50 mV/m. Alaska 33's computations produce a predicted value of 46 mV/m, while FOB's evaluation of the same data put the field strength at 49 mV/m. However, the condition will still be imposed to insure that the *actual*, as opposed to predicted, signal level over the monitoring station is less that 50 mV/m. Alaska 33 has agreed to accept the condition.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-290

In re Applications of

SILENT MINORITY GROUP, INC.	File No. BPCT-870529KL
CENTRAL TEXAS BROADCASTING COMPANY	File No. BPCT-870630KE
CLEAR CHANNEL COMMUNICATIONS, INC.	File No. BPCT-870731KW

For Construction Permit
Bryan, Texas

HEARING DESIGNATION ORDER)

Adopted: May 31, 1988; Released: June 15, 1988

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 28, Bryan, Texas.

2. Mary F. Watkins is the wife of Rodger B. Watkins, President and 50.2% stockholder of Silent Minority Group (Silent),[1] and she is an applicant (BPH-870331MQ) for a construction permit for a new FM radio station on channel 241 in Madisonville, Texas. Madisonville would be within the predicted Grade A contour of the proposed television station. There is a rebuttable presumption that the media interests of spouses are attributable to one another. Section 73.3555(b)(2) of the Commission's Rules proscribes common ownership, operation or control of a television station and an FM station if the principal community of the FM station would be within the predicted Grade A contour of the television station. Note 4 to the rule, however, provides for a case-by-case determination as to whether such common ownership, operation or control would be in the public interest in the case of a UHF television station. The application includes the following statement. "If Mary Watkins' application for Madisonville or this application for Bryan is granted while the other application is still pending, then either Mary Watkins or Silent will, as appropriate, amend this application to request exemption from the provisions of Section 73.3555(b)." We will specify an appropriate issue.

3. Central Texas Broadcasting Company, Ltd. (CTB), an applicant in this proceeding, is also the licensee of television station KXXV(TV), Channel 25, Waco, Texas. CTB proposes to operate its proposed television station "primarily as a satellite" of KXXV(TV). There will be substantial overlap between the predicted Grade B contours of the proposed television station and the licensed station. Section 73.3555(a)(3) of the Commission's Rules provides that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more television broadcast stations and the grant of such license will result in overlap of the Grade B contours of the existing and proposed stations. However, Note 5 to the rule exempts television stations that are "primarily satellite from a strict application of the Grade B overlap prohibition. Under Note 5, the Commission considers satellite proposals on a case-by-case basis in order to determine whether common ownership, operation or control of the stations in question would be in the public interest. CTB has requested consideration pursuant to Note 5. The other applicants in the proceeding each proposes a full-service operation. Accordingly, an issue will be specified with respect to the need for a satellite operation.

4. Section IV, FCC Form 301, requires an applicant for a television station to submit, as an exhibit, a brief description, in narrative form, of its planned programming service relating to the issues of public concern facing the proposed service area. CTB has not submitted such an exhibit. Accordingly, the applicant must submit an amendment which contains the requisite exhibit to the presiding Administrative Law Judge within 30 days after this Order is released.

5. Clear Channel Communications, Inc. (CCCI)[2] is also the licensee of stations KTAM(AM) and KORA(FM), Bryan, Texas. Section 73.3555(b)(1) and (2) of the Commission's Rules proscribes common ownership, operation or control of a television station and an AM or FM station if the principal community of the AM or FM station would be within the predicted Grade A contour of the television station. Note 4 of the rule, however, provides for a case-by-case determination as to whether such common ownership, operation or control would be in the public interest in the case of a UHF television station . CCCI has requested consideration of its proposal pursuant to Note 4 of the Rules. Accordingly, an appropriate issue will be designated.

6. CCCI's proposed tower is to be co-located with the nondirectional tower authorized for AM station KTAM, Bryan, Texas and it will be 1.18 km from the directional array of AM station WTAW, College Station, Texas. Because of the proximity of the proposed tower to KTAM and WTAW, grant of a construction permit to CCCI will be conditioned to ensure that KTAM's and WTAW's radiation patterns are not adversely affected by the construction of the proposed station.

7. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. No determination has been reached that the tower height and location proposed by CTB would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to the application of Silent Minority Group, whether the interests of Rodger B. Watkins in the applicant and the interests of Mary F. Watkins in the pending application (BPH-870331MQ) for a construction permit for a new FM station in Madisonville, Texas, are consistent with Section 73.3555 of the Commission's Rules and, if not, whether such ownership, operation or control would be consistent with the public interest.

2. To determine with respect to Central Texas Broadcasting Company, Ltd., whether circumstances exist which would make operation of a "satellite" necessary in Bryan, Texas.

3. To determine with respect to Clear Channel Communications, Inc., whether its ownership of stations KTAM(AM) and KORA(FM), Bryan, Texas, and the proposed television station, would be consistent with Section 73.3555(b)(1 and 2) of the Commission's Rules, and if not, whether common ownership, operation, or control of the stations in question would be consistent with the public interest.

4. To determine whether there is a reasonable possibility that the tower height and location proposed by Central Texas Broadcasting Company would constitute a hazard to air navigation.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. IT IS FURTHER ORDERED, That Central Texas Broadcasting Company shall submit an amendment which contains the exhibit required by Section IV, FCC Form 301, to the presiding Administrative Law Judge within 30 days after this Order is released.

12. IT IS FURTHER ORDERED, That in the event of a grant of the application of Clear Channel Communications, Inc., the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM Station WTAW, College Station, Texas, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission. During installation of the antenna authorized herein, AM Station KTAM, Bryan, Texas, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

13. IT IS FURTHER ORDERED, That the Petition for Leave to Amend filed by Clear Channel Communications, Inc. IS GRANTED, and the amendment IS ACCEPTED for 1.65 purposes only.

14. IT IS FURTHER ORDERED, That the Petition for Leave to Amend filed by Silent Minority Group, Inc. IS GRANTED, and the amendment IS ACCEPTED with no comparative benefit accruing to the applicant.

15. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 4.

16. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

17. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Service Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-291

In re Applications of

EBENEZER BROADCASTING GROUP, INC. — File No. BPCT-870331QI

MINISTERIO RADIAL CRISTO VIENE PRONTO, INC. — File No. BPET-870507KG

For Construction Permit
Guayama, Puerto Rico

HEARING DESIGNATION ORDER

Adopted: May 31, 1988; Released: June 15, 1988

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications to construct a new television station on Channel 46, Guayama, Puerto Rico.

2. On August 12, 1987, the Association of Maximum Service Telecasters (AMST) filed informal objections against both applications on the grounds that the site specified by each applicant would be short-spaced to the site proposed in the pending application (BPCT-861117KS) of Jose A. Ortiz Lozada (Lozada) for a new television station on channel 60 in Arecibo, Puerto Rico. Lozada's application is mutually exclusive with three competing applications[1] for channel 60 in Arecibo. The Commission's own study reveals that the site specified by Ebenezer Broadcasting Group, Inc. (Ebenezer) would be 95.4 km from the reference point for channel 60 in Arecibo, whereas Sections 73.610 and 73.698 of the Commission's Rules require a minimum separation of 95.7 km. Ebenezer's proposed site would also be 93.5 km from the site proposed by Grimm (short-spaced 2.2 km) and 94.8 km from the site proposed by Matos (short-spaced .90 km); and 80.9 km from the site proposed by Lozada (short-spaced 14.8 km). The site proposed by Ministerio Radial Cristo Viene Pronto, Inc. (Ministerio) would be 94.8 km from the site proposed by Grimm (short-spaced .90 km) and 82.2 km from the site proposed by Lozada (short-spaced 13.5 km). The Arecibo applications were cut off before either of the Guayama applications was filed. An issue will be specified with respect to both applicants to determine whether circumstances exist which would warrant a waiver of the Rules.

3. Channel 46 is the only television channel allocated to Guayama. Ministerio proposes to operate on the channel as a noncommercial educational station whereas Ebenezer proposes a conventional commercial station. A threshold question arises, therefore, as to whether there is a greater need for educational programming as proposed by Ministerio or for commercial programming as proposed by Ebenezer. If it is determined that there is a greater need for one or the other type of operation, a choice can be made between the applicants without reliance on a comparative evaluation. If, however, a clear choice cannot be made on that basis, then the applicants will be evaluated on a comparative basis.

4. From our review of the proposals submitted by both applicants, we cannot determine whether the applicants are in compliance with the revised environmental rules set forth in the Report and Order in General Docket No. 79-163, 51 Fed. Reg. 14999 (1986). Under the revised rules, an applicant must determine whether the radiation hazard of its proposal would have a significant environmental effect under the criteria set out in Section 1.1307 of the Commission's Rules. If the application is subject to environmental processing under the Section 1.1307 criteria, the applicants must then submit an environmental assessment (EA) containing the information delineated in Section 1.1311 of the Commission's Rules. Section 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure of workers or the general public to levels of radio frequency radiation exceeding specific standards. An examination of these applications suggests that they have not followed the procedures outlined above. While it is unlikely that an RF problem exists as a result of the height and power proposed by each applicant, other factors must be evaluated by the applicants in making a final determination. The applicants will be required to file, within 30 days of the release of this Order, a statement or showing with respect to radiation hazards that might have an adverse effect on the quality of the environment with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Television Branch, Mass Media Bureau, who will then proceed regarding this matter in accordance with the provisions of Section 1.1308. A copy of the statement must also be filed with the Chief, Hearing Branch, Mass Media Bureau. Accordingly, a contingent environmental issue will be specified, and the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See , Golden State Broadcasting*, 71 FCC 2d 229 (1979). *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the proposals are consistent with Sections § 73.610 and 73.698 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rules.

2. To determine whether there is a greater need for noncommercial educational programming or for commercial programming in Guayama, Puerto Rico and the surrounding area to be served.

3. If a final environmental impact statement is issued with respect to either applicant which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act as implemented by Sections § 1.1301-1.1319 of the Commission's Rules.

4. In the event that it is concluded that a choice between the applications should not be based solely on considerations relating to whether there is a greater need for commercial or educational programming, to determine which of the applications would, on a comparative basis, better serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. IT IS FURTHER ORDERED, That the applicants shall each submit an amendment which contains an environmental statement as explained in paragraph 4, above, to the presiding Administrative Law Judge and a copy to each the Chief, Television Branch and the Chief, Hearing Branch, Mass Media Bureau, within 30 days after this Order is released.

8. IT IS FURTHER ORDERED, That Association of Maximum Services Telecasters, Inc. IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

9. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Video Services Division
Mass Media Bureau

FOOTNOTE

[1] The applicants for channel 60 in Arecibo are: Jose A. Ortiz Lozada (Lozada; BPCT-861117KS); Aurio Matos, Jr. d/b/a The Children Television Media (Matos; BPCT-870211KE); Hector Negroni Cartagena (BPCT-870212KK); and Frederick Grimm d/b/a Mountlake Productions, Ltd. (Grimm; BPCT-870212KY).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-292

In re Applications of

Steven Heft d/b/a HEFTY COMMUNICATIONS, LTD	File No. BPCT-870331QA
M & D BROADCASTING, LTD.	File No. BPCT-870331QB
RALPH D. ALBERTAZZIE	File No. BPCT-870602KK

For Construction Permit
Martinsburg, West Virginia

HEARING DESIGNATION ORDER)

Adopted: May 31, 1988; Released: June 15, 1988

By the Chief, Video Services Division:

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications to construct a new commercial television station on Channel 60, Martinsburg, West Virginia.[1]

2. Section II, Item 6(b), FCC Form 301, inquires if the applicant or any party to the application has any interest in or connection with a broadcast application pending before the Commission. Heft has responded in the affirmative, but has failed to disclose all of his pending applications. Commission records show that an additional three applications were filed on the same date as this application: (BPCT-870331QG, Channel 22, Tuskegee, Alabama; BPCT-870331PY, Channel 44, Salina, Kansas and BPCT-870331LT, Channel 40, Crockett, Texas). All of Heft's applications were filed on March 31, 1987. Heft has filed no amendment to reflect these applications, or any other applications in which he might have a cognizable interest. The disclosure of interests in other broadcast stations or applications is necessary in determining compliance with the Commission's multiple ownership rules. Of equal importance is that interests in other broadcast stations or applications are significant in the comparative hearing process. Heft's application gives rise, therefore, to the question of whether he attempted to conceal material facts. Accordingly, an appropriate issue will be specified.

3. The contour maps included in the Heft and M & D applications show contours that do not reflect the contour calculations given in Section V-C, Item 15. Accordingly, Heft and M & D will each be required to amend its application to provide corrected data in Section V-C, Item 15, (tabulation of terrain data), new contour maps and area and population figures. These amendments must be submitted to the presiding Administrative Law Judge within 30 days of the release of this Order.

4. Section II, Item 8(b), inquires if any member of the immediate family of the applicant has any interest in or connection with any other broadcast station or pending broadcast application. Heft and M & D each have responded "not applicable." The question requires a "yes" or "no" response. Heft and M & D each will be required to submit an amendment with the proper response to Section II, Item 8(b), to the presiding Administrative Law Judge within 30 days of the release of this Order.

5. Section IV, FCC Form 301, requires an applicant for a television station to submit as an exhibit a brief description, in narrative form, of its planned programming service relating to the issues of public concern facing the proposed service area. Heft and M & D have not submitted such an exhibit. Accordingly, the applicants must file the appropriate exhibit with the presiding Administrative Law Judge within 30 days after this Order is released.

6. Section II, Item 5(a), FCC Form 301, requires that Table I be completed, identifying all parties to the application. Table I in M & D's application show that Roswell Broadcasting, Inc. and Robin Hellerich are the general partners of M & D, a general partnership, but the identity, home address, ownership interest, other broadcast interests, and citizenship of the principals of Roswell Broadcasting have not been disclosed. Although Roswell Broadcasting is an existing licensee and ownership information is on file in the licensee's Ownership Report, those Reports are updated only on an annual basis. An appropriate amendment must be filed, therefore, to specify current information as to ownership, officers, directors and other media interests of Roswell Broadcasting. Moreover, Section VII of the application form, certifying the truth, accuracy and completeness of the information contained in the application, is signed by Vernice Boozer as general partner. Vernice Boozer also signed the certification of site availability, but Ms. Boozer's connection with the applicant has not been disclosed. Since an application is not valid unless Section VII is properly signed by a principal, M & D will be required to submit a properly signed Section VII, a properly signed certification of site availability, and to furnish all necessary information with respect to the principals of M & D and Roswell Broadcasting, as required by Section 73.3514(a) of the Commission's Rules.

7. Vernice Boozer is an applicant (BPCT-8612167L) for a construction permit for a new television station on channel 63, Monroe, Georgia. Her application was designated for comparative hearing in Docket No. 87-83, released April 10, 1987 (2 FCC Rcd 2104). In that proceeding, an issue was specified against Boozer to determine whether she made misrepresentations to the Commission with respect to whether she had reasonable assurance that her proposed transmitter site would be available to her. In the event that the information required in paragraph 6, supra, reveals that Boozer is connected with M & D, any adverse findings against Boozer in MM Docket No. 87-83 shall be binding in this proceeding under the doctrine of collateral estoppel so that Boozer will be precluded from relitigating those findings here. *See United Broadcasting Co.*, 86 FCC 2d 452, 459-461 (1981); *Melvin Jones* (HDO, released September 15, 1987, MM Docket No. 87-373). If, for any reason, the

issue is not resolved in the proceedings in MM Docket No. 87-83, the presiding officer in this proceeding may add the issue in this proceeding *sua sponte* and proceed to try it.

8. The coverage map (Exhibit 3) and the transmitter site map (Exhibit 4) submitted by M & D do not agree with the coordinates specified in Section V-C, Item 4. Accordingly, M & D will be required to amend its application to provide a correct coverage map and transmitter site map that agree with its specified coordinates to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. M & D's proposed tower is to be co-located with the nondirectional tower of AM station WCST, Berkeley Springs, West Virginia. Because of the proximity of the proposed tower to WCST, a grant of a construction permit to M & D will be conditioned to ensure that WCST's radiation pattern is not adversely affected by the proposed construction.

10. Applicants for new broadcast stations are required by Section 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in Section 73.3580(h) of the Rules. We have no evidence that M & D has published the required local notice. To remedy this deficiency, M & D will be required to file a certification of compliance with the presiding Administrative Law Judge within 30 days of the release of this Order.

11. Ralph Albertazzie proposes to operate from a site located within 400 km of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 400 km of Canada to 1000 kilowatts. *AgreementEffectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of Albertazzie's application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

12. No determination has been reached that the tower height and location proposed by any of these applicants would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

13. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

14. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

15. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Steven Heft whether his failure to disclose his interests in other pending broadcast applications as required by Section II, Item 6(b), FCC Form 301, was an attempt to conceal material facts from the Commission and, if so, the effect thereof on his basic qualifications to be a Commission licensee.

2. To determine, with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

16. IT IS FURTHER ORDERED, That Heft Communications, Ltd. and M & D Broadcasting, Ltd. shall each submit an amendment with the proper response to Section II, Item 8(b), as set out in paragraph 4, *supra*, to the presiding Administrative Law Judge, within 30 days of the release of this Order.

17. IT IS FURTHER ORDERED, That Heft Communications, Ltd. and M & D Broadcasting, Ltd. shall each submit an amendment with respect to terrain data, new contour maps and area and population, as set out in paragraph 3, *supra*, to the presiding Administrative Law Judge within 30 days of the release of this Order.

18. IT IS FURTHER ORDERED, That Heft Communications Ltd. and M & D Broadcasting, Ltd. shall each submit an amendment with the proper response to Section IV, FCC Form 301, as set out in paragraph 5, *supra*, to the presiding Administrative Law Judge within 30 days after this Order is released.

19. IT IS FURTHER ORDERED, That M & D Broadcasting, Ltd. shall submit an amendment to provide a correct coverage map and transmitter site map that agree with its specified coordinates to the presiding Administrative Law Judge within 30 days of the release of this Order.

20. IT IS FURTHER ORDERED, That in the event of a grant of the application of M & D Broadcasting, Ltd., the construction permit shall be conditioned as follows:

During installation of the antenna authorized herein, AM Station WCST, Berkeley Springs, West Virginia, shall determine operating power by the indirect method. Upon completion of the installation, antenna impedance measurements on the AM antenna shall be made and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission

(along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

21. IT IS FURTHER ORDERED, That M & D Broadcasting, Ltd. shall file certification with the presiding Administrative Law Judge within 30 days after this Order is released that it has or will comply with Section 73.3580 of the Commission's Rules.

22. IT IS FURTHER ORDERED, That M & D Broadcasting, Ltd. shall submit a properly signed Section VII and a properly signed certification of site availability to the presiding Administrative Law Judge within 30 days of the release of this Order.

23. IT IS FURTHER ORDERED, That M & D Broadcasting Ltd. shall submit an appropriate amendment updating the ownership information for Roswell Broadcasting, Inc., as discussed in paragraph 6, *supra*, to the presiding Administrative Law Judge, within 30 days of the release of this Order.

24. IT IS FURTHER ORDERED, That in the event of a grant of the Ralph Albertazzie application, the construction permit shall be conditioned as follows:

> Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

25. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 2.

26. IT IS FURTHER ORDERED, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. Each applicant shall attach to its notice of appearance a remittance of6,000 as a hearing fee as required by Section 1.1104 of the Commission's Rules.

27. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Video Service Division
Mass Media Bureau

FOOTNOTE

[1] The Association of Maximum Service Telecasters, Inc., filed statements with respect to the applications of Ralph Albertazzie and Steven Heft. The statements noted that while both applicants proposed sites short spaced to the licensed facilities of WBFF(TV), Baltimore, Maryland, each proposals does meet the separation requirements to the WBFF(TV)'s site authorized in a construction permit (BPCT-860326KF) granted May 12, 1986. Since, WBFF(TV) is now operating from that site, it is unnecessary to dispose of Albertazzie's request for waiver or to add a short space issue against the applicants.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

LINCOLN CELLTELCO — File No. 34568-CL-P-172-A-86

For A Construction Permit to Establish a Cellular System on Frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to Serve the Lincoln, Nebraska Metropolitan Statistical Area (MSA)

MEMORANDUM OPINION AND ORDER

Adopted June 6, 1988; Released: June 15, 1988

By the Chief, Mobile Services Division:

BACKGROUND

1. Natubhai Patel (Patel) has filed a Petition to Deny against the application of Burton K. Werner (Werner), the tentative selectee for the Lincoln, Nebraska MSA. Lincoln CELLTELCO (CELLTELCO), formerly Werner,[1] filed an opposition to the petition. Patel then filed a Supplement to Petition to Deny, and CELLTELLCO filed responsive pleadings, including a Motion to Strike the Supplement.

2. Patel alleges that CELLTELCO's application is defective because it lacks reasonable assurance of site availability for two of the three cells proposed. Patel's argument is based on the affidavit of its engineering consultant who states that the coordinates for the proposed Cell Site No. 2 would place the site on the property of either Ann Gertrude Jones or Ross Birt. Patel also submits the affidavits of Jones and Ross Birt which state that they did not give Werner or anyone else permission to use their properties for cellular antenna sites. For Cell Site No. 3, Patel asserts that its investigation disclosed Allen L. Snell as the owner of the property for the coordinates specified in the CELLTELCO application. Patel submits declarations from Snell and his mother, who state that they were never contacted by Werner or any other person regarding availability of their property for a cellular facility. Thirty feet from the Snell property, says Patel, is the property of Winfield J. Mumma and Maurine K. Mumma. Patel submits the declaration of Mr. and Mrs. Mumma. They state that they were contacted by CELLTELCO but that they did not agree to lease or sell their property to Werner. They only indicated their willingness to discuss a lease at an unspecified future time but have not done so. Patel argues that CELLTELCO's application neither complies with Commission standards for the certification to be signed by the applicant nor comports with the Commission's case precedent. Patel states that the CELLTELCO application was defective at the time it was filed and cannot be cured by amendment after filing.

3. Patel also contends that CELLTELCO should be disqualified on the basis of a character issue raised by the submission of false certifications of site availability by Werner in applications for the Springfield, Illinois; Jamesville-Beloit, Wisconsin; and Anderson, South Carolina MSAs. Patel alleges that Werner submitted in these other markets the same mass marketed applications which were filed by the tentative selectees.[2] Since these selectees' applications have been shown to lack reasonable assurance of site availability, contends Patel, the Werner applications for the same MSAs also lacked such assurance and therefore, contained false certifications of site availability. Patel argues that when this evidence of Werner's conduct in other markets is viewed with the evidence in its petition, Werner's lack of character qualifications to be a licensee is demonstrated. Patel claims that Werner has falsely certified that he had reasonable assurance for the cell sites in his proposed system for the Lincoln MSA and has misrepresented such assurance to the Commission. The Commission should dismiss CELLTELCO's application or designate a character qualification issue against it for hearing.

4. CELLTELCO initially responds that the locations for both Cell Sites 2 and 3 have been correctly described in the Schedule B of its application. CELLTELCO asserts that the site for Cell No. 2 is actually on the property of Earl and Iona Birt, which borders the land of Ross Birt. To show that it has correctly described the site for Cell No. 2, CELLTELCO submits a declaration from Earl Birt, which states that he provided CELLTELCO's agent, Real Estate Leasing Company (RELC), with a letter [3] that evidences reasonable assurance of site availability as of May 25, 1984. CELLTELCO also submits a second declaration, from Mary Wickencamp, a Lincoln, Nebraska attorney, which states her opinion that it is reasonable to conclude that the coordinates for Cell Site 2 place the site on the property of Earl Birt. With regard to Cell Site 3, CELLTELCO asserts that not until it investigated Patel's allegations did Mr. and Mrs. Mumma inform Werner that they no longer wanted to lease the site. It submits that the declaration from Wickencamp also demonstrates the location of Cell Site 2 on the property of Mr. and Mrs. Mumma. Attached to the Wickencamp declaration for Site 3 is a letter signed by William Mumma and addressed to RELC, stating that the letter confirms the availability of the property and that it may be used to demonstrate reasonable assurance of site availability before the Commission. As for Patel's allegation concerning character qualifications, CELLTELCO further argues that the accuracy of Werner's applications in the Springfield, Illinois; Janesville-Beloit, Wisconsin; and Anderson, South Carolina MSAs has no bearing on its application in Lincoln.

5. In its Supplement to Petition to Deny, Patel insists that the plotted co-ordinates for Cell Site No. 2 still place the site on land not belonging to Earl Birt. Patel asserts that the representation on the location by CELLTELCO in its pleading was based not on a plotting but merely on the opinion of a local attorney, Wickencamp. Concerning Cell Site No. 3, Patel maintains in its Supplement that the change of wording by Mumma in the site letter from "willingness to negotiate" to "willing to discuss negotiating" negates the commitment to make his land available. In reply to the Supplement, CELLTELCO submits the declaration of Mary Light, who had initially contacted Earl Birt on behalf of RELC. Concerning Cell Site No. 2, she states that Birt was asked to mark the location of his

property on a U.S. Geological Survey Map. She attributes the discrepancy between the site location and coordinates to Earl Birt erroneously designating an area which does not represent his property. CELLTELCO also files an amendment [5] which corrects coordinates purporting to show the site on Earl Birt's property.

DISCUSSION

6. An applicant is required to establish that it has reasonable assurance that its proposed cell sites will be available. The applicant must "determine that there is space available on an existing property or tower, or if a new structure is to be built, that the property is available for such use and that it is reasonable to anticipate that it may use this space." *Public Mobile Service*, 95 FCC 2d 769, 778, released December 19, 1983; *See Anderson Celltelco*, 2 FCC Rcd 4364 (1987). As to Cell Site 2, we find that the letter signed by Earl Birt provided reasonable assurance that Werner could use Earl Birt's property. The discrepancies in coordinates are minor errors which can be corrected by minor amendment under Section 22.918 (b) of the Rules. In instances where the coordinates provided in the application locate the cell site on property other than that for which a certification of site availability has been provided, we have allowed such corrections. *Edward J. Forks*, 2 FCC Rcd 1276 (1987); *Anderson Celltelco, supra* ; *John Cellular Associates*, 2 FCC Rcd 6017 (1987). Such errors do not violate the "letter perfect" standard. *Id.* ; *See Johnstown Cellular Communications, Co.*, 1 FCC Rcd 1164 (1986).

7. With regard to Cell Site 3, we conclude that at the time of applying, Werner had a site letter from Mr. Mumma clearly confirming availability of his property for the site. A lease or option to lease is not necessary. *Public Mobile Service, supra.* Applicants are only required to obtain permission from the owner of the property or his agent as to the existence and future availability of the site. *See Advanced Mobile Phone Service, Inc.*, 52 Rad. Reg. 2d (P&F) 1593, 1598, released January 21, 1983. The fact that Mumma changed wording in the letter for the negotiation of a lease to be discussed at a future time does not detract from the reasonable assurance which the letter provides.-*h* [6] - *s*

8. Patel's allegation that the assurance of site availability has been misrepresented in three other MSAs in which Werner applied is meritless. For the Anderson, South Carolina MSA, we have determined that Werner, the original tentative selectee, had a reasonable assurance. *Anderson Celltelco, supra*. In the Janesville-Beloit and Springfield MSAs, Werner was not the tentative selectee and was not required to reply to the allegation. *See also Topeka Cellular T. A. Inc.*, 2 FCC Rcd 4503 (1987); *Gary R. Zipper*, 2 FCC Rcd 1246 (1987).

9. After carefully reviewing the matters raised in the pleadings, we conclude that Lincoln CELLTELCO is financially, technically, and legally qualified to be a Commission cellular licensee.

10. Therefore, IT IS ORDERED, That the Petition to Deny filed by Natubhai Patel IS DENIED.

11. IT IS FURTHER ORDERED, That the application of Lincoln CELLTELCO, File No. 34568-CL-P-172-A-86 IS GRANTED. Construction is not authorized at any location for which a final Federal Aviation Administration determination has not been submitted to the Commission and any required marking and lighting specifications have not been issued by the Commission. The authorization does not include the right to any interference protection in any areas outside the Lincoln, Nebraska MSA and is further conditioned upon coordinating with current and future licensees in the adjacent markets and upon providing interference-free operations to licensees in those areas.

12. IT IS FURTHER ORDERED, That all other non-wireline applications in this market ARE DENIED.

13. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATION COMMISSION

Kevin J. Kelley
Chief, Mobile Services Division

FOOTNOTES

[1] Werner filed an amendment to change the name of the application to Lincoln CELLTELCO (CELLTELCO).

[2] In the Anderson, South Carolina MSA, Werner's application was also the tentative selectee.

[3] The letter is appended to the Declaration of Earl Birt.

[4] Under Sections 1.823 (b)(2) and 22.33 of the Commission's Rules, supplementary pleadings are unauthorized. Section 1.45 (c) does permit additional pleadings if they are specifically requested or authorized by the Commission. Patel's request to file its Supplement was not made pursuant to Section 1.45 (c). However, we are considering it along with CELLTELCO's reply to the very limited extent that both may provide a fuller record for reaching the determinations on the issue of site availability. While Patel does not present "new evidence" which could not have been timely discovered, the inconsistencies in the record concerning the site locations warrant further consideration of the pertinent facts presented.

[5] CELLTELCO amendment, filed August 14, 1987.

[6] As for Patel's allegation that the coordinates which CELLTELCO provided in its application place Cell Site No. 3 on Snell's property and not on Mumma's, we believe after considering all of the declarations that CELLTELCO reasonably relied on its agent for the calculation of the coordinates in relation to the Mumma property. CELLTELCO was not under any obligation to verify the agent's determination. *See John Cellular Associates, supra.* In addition, since it discovered that it no longer had reasonable assurance of the availability of Mumma's property, CELLTELCO filed an amendment, September 14, 1987, to change the site for Cell No. 3 and provide a letter of reasonable assurance of site availability. We find this amendment acceptable under Section 22.918 (b) of the rules. *Id.*

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-131

In the Matter of

Unlimited-time Operation by Existing AM Daytime-only Radio Broadcast Stations; Discontinuance of Authorization of Additional Daytime-only Stations; and Minimum Power of Class III Stations

ERRATUM

Released: June 15, 1988

In a *Report and Order* in MM Docket No. 87-3, FCC 87-346 (2 FCC Rcd 1987) 47 CFR §73.99 was amended by redesignating paragraphs (c) through (k) as (d) through (l), and by adding a new paragraph (c). The *Report and Order* in MM Docket No. 87-131, FCC 87-356 (2 FCC Rcd 7113, 1987) added an additional paragraph, which it erroneously referred to as paragraph (l). The correct designation for this paragraph is (m). Section 73.99 is therefore corrected as reflected in the attached Appendix.

FEDERAL COMMUNICATIONS COMMISSION

Alex D. Felker
Chief, Mass Media Bureau

APPENDIX

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154 and 303.

2. 47 CFR 73.99 is corrected by redesignating newly added paragraph (l) as paragraph (m). Paragraph (l), and its associated note, and paragraph (m) are republished to read as follows:

§73.99 Presunrise service authorization (PSRA) and Post sunset service authorization (PSSA).

* * * * *

(l) A station having an antenna monitor incapable of functioning at the authorized PSRA and PSSA power when using a directional antenna shall take the monitor reading using unmodulated carrier at the authorized daytime power immediately prior to commencing PSRA or PSSA operations. Special conditions as the FCC may deem appropriate may be included for PSRA or PSSA to insure operation of the transmitter and associate equipment in accordance with all phases of good engineering practice.

NOTE: Extended hours of operations are subject to international agreements governing all operations. These agreements are in the process of revision, but until this process is completed it will not be possible to allow full operation as outlined above.

(m) The authorization of unlimited-time operation by daytime-only stations that are reclassified as Class II-S or Class III-S stations will not affect their right to operate during prescribed presunrise and postsunset hours in accordance with PSRA's and PSSA's issued pursuant to this section.

Before the
Federal Communications Commission
Washington, D.C. 20554

ROGER LEE AND LANI LEE,

Complainants,

v. File No. E-88-65

THE WESTERN UNION
TELEGRAPH COMPANY,

Defendant.

ORDER

Adopted June 8, 1988; Released: June 15, 1988

By the Chief, Common Carrier Bureau:

1. On April 18, 1988, Roger Lee and Lani Lee filed a complaint against The Western Union Telegraph Company (Western Union) alleging that Western Union's former billing and refund practices for uncompleted calls were unjust, unreasonable, and in violation of 47 U.S.C. § 201(b).[1] Western Union has filed a Motion to Make [the complaint] More Definite and Certain. It asks that we require complainants to supplement the complaint with the transactional details of the calls made by complainants during the period covered by the complaint and to indicate which of the calls should not have been billed. They state that "contrary to §1.722 of the Commission's Rules and Regulations [47 C.F.R. § 1.722], the Complainants have failed to specify a single instance wherein they were injured in any manner or degree by the Western Union practices they complain of." Motion at 2.

2. Complainants oppose the motion. They allege that the theme of Western Union's argument is that the complaint is deficient because it failed to specify the damages suffered by the Lees. They argue that Section 1.722 is captioned "Damages," and since they have not requested money damages, that section of the rules is inapplicable. They contend that "the complaint is adequately specific to permit adjudication of the issues raised by it." Opposition at 2. Western Union filed a reply to this opposition.

3. Preliminarily, we note that in referring to Section 1.722 of the Rules, the parties are apparently arguing about two different provisions. When the complaint and the Motion to Make More Definite and Certain were filed, the then-current Section 1.722 was entitled "Statement of Issues and Facts" and provided in pertinent part that:

> A formal complaint shall be so drawn as to advise the Commission and the defendant fully wherein the provisions of the Communications Act, or an order, rule, or regulation of the Commission have been violated; as to the facts claimed to consitute such violation, including such data as will identify, with reasonable certainty, the communications, transmissions, or other services complained of . . . .

The Section 1.722 identified by complainants, on the other hand, which is entitled "Damages," is a new section of the Commission's regulations, which did not become effective until May 13, 1988. *Amendment of Rules Governing Procedures To Be Followed Where Formal Complaints Are Filed Against Common Carriers*, CC Docket No. 86-498, 3 FCC Rcd 1806 (1988). Contrary to complainants' characterization of the motion, Western Union does not allege that the complaint is deficient because it fails to specify the damages suffered by the Lees, but because it fails to specify "the details of the transaction by or through which the complainant was harmed." Motion at 2. Western Union asserts that the complaint merely states that the Lees took service from Western Union, but that it is possible that they never had a call that was unanswered but billed. We will not summarize the arguments of the parties regarding damages and injuries in further detail because they are not germane to our ruling on the instant motion and therefore we need not reach them at this time.

4. Former Section 1.722 of the Rules required a complainant to "identify, with reasonable certainty, the communications, transmissions, or other services complained of . . . ." The revised rules also provide that the complaint shall include a "complete identification or description, including relevant time period, of the communications, transmissions, services, or other carrier conduct complained of and nature of the injury sustained." 47 C.F.F. § 1.721 (a)(6). The above-listed complaint fails to identify any such specific transactions under either version of the Rules. Normally, we would grant a motion to make more definite and certain in these circumstances. However, complainants concede that they are unable to provide details of specific instances of overbilling. They state that they subscribed to Western Union's Metrofone long-distance telephone service between December 1983 and March 1984. The gravamen of their complaint is that they were never effectively notified that their telephone bills might include charges for uncompleted calls. Therefore, they did not review their bills to determine if they had been billed for uncompleted calls, nor did they request refunds from Western Union for uncompleted calls. Since they state that they cannot identify specific instances of overbilling, no purpose would be served by directing them to amend the complaint to supply such details.

5. For the above reasons we dismiss the Motion to Make More Definite and Certain and direct Western Union to answer the complaint within 10 days of the release of this order. That answer should contain any arguments defendant may wish to raise as to the adequacy of the complaint.

6. Accordingly, IT IS ORDERED, pursuant to authority delegated in 47 C.F.R. § 0.291, that the Motion to Make More Definite and Certain IS DISMISSED.

7. IT IS FURTHER ORDERED that Western Union shall answer the complaint within 10 days of the release of this order.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] This complaint has been filed at the request of Judge Taylor of the Eastern District of Michigan. Judge Taylor has retained jurisdiction of the matters in controversy in a complaint pending before him but has requested that the plaintiffs file a complaint with the Commission for a determination of questions within the Commission's primary jurisdiction, namely whether the alleged business practices of the defendant are unreasonable practices under Section 201(b) of the Communications Act and therefore unlawful. We note that the general matter raised in the instant complaint was the subject of a previous primary jurisdiction referral. Certified Collateral Corp. v. Allnet Communications Services, Inc., 2 FCC Rcd 2171 (1987). *See also*, Bill Correctors, Ltd. v. United States Transmission Systems, Inc., Mimeo No. 703 (Released Nov. 8, 1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

Bloomington-Normal MSA Limited Partnership	File No. 89173-CL-P-250-B-86
Ameritech Mobile Communications, Inc.	File No. 80610-CL-P-250-B-86

For Authority to construct a cellular system in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block B in the Bloomington-) Normal, Illinois MSA

In re Applications of

Decatur MSA Limited Partnership	File No. 55066-CL-P-230-B-86
Illinois Consolidated Telephone Company	File No. 40445-CL-P-230-B-86
Ameritech Mobile Communications, Inc.	File No. 80610-CL-P-230-B-86
Inland Cellular Telephone Company	File No. 51090-CL-P-230-B-86

For authority to construct a cellular system in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block B in the Decatur, Illinois MSA

MEMORANDUM OPINION AND ORDER

Adopted: June 8, 1988; Released: June 15, 1988

By Chief, Mobile Services Division:

INTRODUCTION

1. Before the Division are Joint Contingent Motions to Dismiss, a Request for Grant of Amended Application and Approval of Settlement and Related Relief (Joint Motion) filed by Inland Cellular Telephone Company (Inland), US West NewVector Group, Inc. (NewVector), Ameritech Mobile Communications, Inc. (Ameritech), Mount Pulaski Cellular Company (Mt. Pulaski) and Midwest Cellular Associates (Midwest) in the Bloomington and Decatur, Illinois MSAs to implement a settlement agreement (multi- market settlement) covering these and two other central Illinois MSAs, Springfield, and Champaign-Urbana-Rantoul (Champaign). Pursuant to the settlement, these parties have formed the Illinois SMSA Limited Partnership (Illinois Partnership) to become the wireline permittee in the four MSAs with Ameritech's subsidiary, Ameritech Mobile Phone Service of Illinois (AMPS-Illinois) as the majority and general partner.[1] In seeking approval of the arrangement, the parties request the grant of a major amendment to the applications of the tentative selectees in Decatur and Bloomington under Sections 22.23 (g)(2) and (3) of the Rules, so that the applications are not considered newly filed and cut-off pursuant to the provisions of Section 22.31. The parties also request that Ameritech's Bloomington application be dismissed conditionally and without prejudice.

2. In regard to the Bloomington MSA, El Paso Telephone Company and Gridley Telephone Company (Petitioners), who are wireline applicants in the Bloomington MSA, have filed an Opposition to the Joint Contingent Motion and Petition to Deny or Dismiss Amended Application. Replies to the Opposition have been filed by the Bloomington-Normal MSA Limited Partnership (Bloomington Partnership) and AMPS-Illinois on behalf of the Illinois Partnership. Additional responsive pleadings have been filed.

BACKGROUND

3. In the Bloomington MSA, the tentative selectee is the Bloomington-Normal MSA Limited Partnership (Bloomington Partnership), with Inland as the General Partner. NewVector and Inland are Limited Partners. Ameritech filed its own application in the Bloomington MSA, while Mt. Pulaski and Midwest did not file in this market.[2]

4. In the Decatur MSA, the Decatur MSA Limited Partnership, (Decatur Partnership) is the tentative selectee. Mt. Pulaski is the general partner and also a limited partner along with NewVector. Inland filed a separate application and then pursuant to a pre-lottery settlement announced in a Section 1.65 amendment, became a limited partner. [3] Ameritech and Consolidated Illinois filed applications in the Decatur market.

5. In the Springfield MSA, the Springfield MSA Limited Partnership (Springfield Partnership), consisting of Mt. Pulaski and NewVector, filed an application, as did Ameritech and Consolidated Illinois. The Springfield Partnership application was selected first in the lottery and then dismissed by the Commission. After its Petition for Reconsideration of the dismissal was denied,[4] the Springfield Partnership filed an Application for Review, which is pending. The Commission then named Ameritech as tentative selectee and issued it a construction permit. The parties to the multi-market settlement request a *pro forma* assignment of the construction permit to reflect the new

interests resulting from the settlement, and Ameritech filed an Application for Assignment or Transfer of Control, which has been approved.[5]

6. With regard to the Champaign MSA, the multi-market settlement refers to a separate agreement between Ameritech, who was an applicant in this market, and ALLTEL Cellular Associates Limited Partnership (ALLTEL), who held a 75 percent interest in Illinois Cellular Associates Limited Partnership, the permittee for Champaign.[6] Under this agreement, ALLTEL assigned its interest to Ameritech.[7] Mt. Pulaski and NewVector did not file in Champaign but receive interests under the multi-market agreement. *See* note 1, *supra*.

SETTLEMENT ISSUES

7. Petitioners assert that the purpose of the multi-market settlement as stated by the parties to settle post-lottery litigation is a pretense to cover Ameritech's acquisition of control of the two pending applications in Bloomington[8] and Decatur and of the unbuilt authorization in Champaign where it had no interest. Petitioners assert that there is no outstanding litigation to be resolved by the settlement. In Bloomington, of the three parties in the multi-market settlement who are not in the Bloomington Partnership, only Ameritech filed an application, but it did not oppose Bloomington Partnership's application. Concerning Decatur, petitioners argue that Midwest's request for an extension of time to file a petition to deny does not constitute litigation. Petitioners contend that if Midwest had grounds to file a petition, it had an obligation to do so and not use its legal position as a basis for settlement. Regarding Champaign, they assert that there is no conflict to resolve, because the initial wireline applicants fully settled. Lastly, petitioners argue that the pending application for review in Springfield is not a sufficient basis to justify transfers of control in the other markets.

8. Petitioners also contend that the proposed transaction is the same as the one rejected in *Madison Cellular Telephone Company*, (*Madison)* 2 FCC Rcd 837 (1987), because as in *Madison*, there is no post-lottery litigation to settle in Bloomington. They argue that a policy in *Madison, supra*, against the transfers of interests in ungranted applications was extended by the Commission to transfers within legitimate settlement groups, *Stockton Cellular Telephone Company*, 2 FCC Rcd 1251 (1987) and *Napa Cellular Telephone Company*, 2 FCC Rcd 1253 (1987), and that this action renders unacceptable the proposed assignment to Ameritech, who is outside the settlement group. Petitioners further argue that *Madison*, *Stockton*, and *Napa*, *supra*, apprise selectees that cellular systems should be built under the pre-lottery ownership regardless of the benefits of settlement.

9. Petitioners also argue that the proposed settlement is not in the public interest. They assert that the major amendment to the Bloomington application can not qualify under Section 22.23 (g)(3) for an exemption from the cut-off rules, because it does not explain (1) why the tentative selectees for the four markets could not provide the same wide area service as quickly as the parties say will be provided through the proposed settlement, and (2) why they could not provide the management expertise as the initial applications represented.

10. In reponse, AMPS-Illinois maintains that due to the litigation in the Springfield market involving Ameritech and the Springfield Partnership, the rights of Ameritech in the wireline permit remain clouded. AMPS-Illinois submits that the best way to eliminate this situation is through the proposed area wide settlement. The result will be that NewVector and Mt. Pulaski in the Springfield Partnership obtain an equity interest in the Springfield permit from Ameritech. In exchange, Ameritech receives an interest in Bloomington. Inland, the partner in Bloomington with NewVector, also receives an interest in Springfield plus the two other markets. Likewise, Midwest, in addition to its interest in Champaign, obtains an interest in the other markets.

11. In Decatur, asserts AMPS-Illinois, Midwest through Consolidated Illinois believed it had a legitimate interest in conflict with the Decatur Partnership. According to AMPS-Illinois, after requesting an extension of time to file a petition, Midwest allowed the time to expire because the parties had already reached the multi-market settlement.

12. AMPS-Illinois also argues that the public benefits resulting from the settlement include an integrated regional system, which offers customers greater value and convenience than a stand-alone system in Springfield. The proposal will expedite acceptance of service throughout the combined four market area. These benefits, it submits, can best be achieved under a single partnership that will provide economies of operation for maintaining high quality service and controlling costs.

13. Further, AMPS-Illinois disputes petitioners' argument concerning the similarity between the settlement arrangements in Bloomington and *Madison, supra*. In Bloomington, it asserts, the two original partners, Inland and NewVector, are not receiving cash payment or profit for their interests as the applicants did in *Madison, supra*. Instead, they are partners in the Illinois Partnership and will hold interests in all four markets. AMPS- Illinois also argues that the proposed settlement broadens the ownership base in each of the markets and thus qualifies for the Section 22.23 (g)(4) exemption from the cut-off rules.

14. Petitioners reply that permitting the settling parties to justify a multi-market system under Ameritech's control on the basis of resolving a dispute in one market would give cellular applicants the incentive to engage in artificial "disputes" and to create settlements to avoid Commission scrutiny of trafficking. Petitioners also contend that Inland and Mt. Pulaski will not be financially liable for their finanical contributions to the new Illinois Partnership. Referring to the proposed agreement,[9] petitioners assert that Ameritech's loans to pay initially for the contributions will be repaid solely from distributions from the Illinois Partnership and therefore are the equivalent of a cash buy-out.

DISCUSSION

15. Section 22.23 (g)(3) of the Rules, under which the parties seek exemption from the cut-off rules of Section 22.31, provides for an exception from the cut-off to be granted in cases where the transferee files amendments to pending applications to reflect changes in ownership or control which are found to be in the public interest and from which a requested exemption from the "cut-off" requirements is granted. In deciding whether to grant the exemption, we must determine whether the change in ownership was made to effect a legitimate business purpose and whether it was in the public interest.[10] In regard

to the pending applications in Bloomington and Decatur, we find that the transfer of control to Ameritech is for a legitimate business purpose. The ownership interests in Bloomington and Decatur resulting from the settlement are part of a larger transaction. The partners in these markets are transferring majority interests to Ameritech in return for substantial minority interests in Ameritech's permits in other markets.[11] Ameritech has already obtained the permits in Springfield and Champaign and its transfer of 49 % of its interest in the unconstructed facilities in those markets in exchange for a majority interest in the two other markets complies with our policy regarding the transfer of interests in permits.[12] Ameritech was an applicant in all four markets involved. We conclude that this trading involves the exchange of significant interests across all four markets that the parties have genuinely bargained for to establish an area wide cellular system rather than an attempt by Ameritech to acquire pending applications in two markets. *See e. g. Airsignal International, Inc.*, 81 FCC 2d 472 (1980). The resolution of the dispute in the Springfield market is a part of this bargaining.[13] Petitioners contentions that this dispute is specious and that there must be litigation in more than one of the four markets lack merit. They have presented no evidence that parties have "created" the dispute. Further, we have not required that litigation must exist between the tentative selectee and other applicants in the same market for a settlement to be approved.

16. We further find that the reasons given by the settling parties regarding the benefits of the change in ownership are in the public interest. We have previously recognized the benefits of area wide systems in which the wireline carrier can utilize the same MTSO, marketing strategies and personnel for the MSAs involved. *See Madison Decision, supra.* The parties to the Illinois Partnership have proposed a single switch to provide service.[14] This will contribute to economies of scale in the area wide operations and provide more efficient service. In addition, it will be possible for Illinois Partnership to avoid roamer charges, resulting in lower costs to the public. *Id.* The proposed settlement also will achieve the objectives of the Commission to encourage settlements as a means of consolidating the many applicants in a market or settlement group into efficient management and entrepreneurial structures and eliminating mutually exclusivity between applicants that can result in litigation that delays service to the public. *Cellular Lottery Order*, 98 FCC 2d 175 (1984). Therefore, we conclude that both the Bloomington and Decatur applications, as amended, qualify for an exemption under Section 22.23 (g)(3) from the cut-off rule.

17. Concerning petitioners' allegation that this settlement is prohibited, we have recognized previously that parties will propose settlement arrangements that are not explicitly governed by specific criteria enunciated for settlements. *See* supra. Although the proposed multi-market settlement does not fit precisely these criteria as applied to Bloomington, we find that the trading of interests prior to the grant of construction permits there as well as in Decatur does not raise concern over speculation and trafficking in cellular interests. *Id.* Petitioners' reliance on *Madison, Stockton*, and *Napa, supra*, is misplaced. Unlike the situations in those cases, the parties to this settlement have provided sufficient information to demonstrate that speculation and trafficking in interests are not occurring.[15] In Bloomington and Decatur,[16] the parties who make up the tentative selectees are wireline carriers who have certified in their applications their intent to build cellular systems and provide service. Moreover, they are also in the business of providing such service. They are also retaining significant interests in the settlement partnership.

18. Lastly, Petitioner's contention that the cash distribution from the Illinois Partnership to Inland and Mt. Pulaski are cash buyouts of their interests in the form of repayment of loans for their partnership contribution presumes that in incurring no financial obligation they will be profiting from the transfer of their interests in Bloomington and Decatur prior to any formal sale. Petitioner's "form over substance" argument does not evidence speculation or trafficking on the part of Inland and Mt. Pulaski. We note that the provision of the multi-market settlement agreement cited by petitioners specifies that the loan agreement between Ameritech and the two minority partners requires that the partnership agreement prevent any sale or transfer of their interests unless the loan is fully paid prior to such sale or transfer.[17] The provision does not violate any Commission Rule or policy. Parties to settlement agreements must demonstrate that they have complied with the Commission's policies and rules against speculation. With the information before us,[18] we are satisfied that the partners in the Bloomington and Decatur tentative selectees transferring their interests have met this burden.

FINANCIAL QUALIFICATIONS

19. Petitioners allege that the proposed Illinois Partnership is not financially qualified under Section 22.917 (b) of the Rules. They contend that the letter from Robert L. Barnett, as President of Ameritech Enterprise Group, inadequately expresses the intent of American Information Technology Corporation (Ameritech) to fund its subsidiary corporations. They assert that the letter extends the financial commitment only to the corporate subsidiaries, and that there is no indication that Ameritech will fund the obligations of the other partners in the settlement group. Furthermore, petitioners submit that there is no evidence that Barnett is authorized to commit the funds of Ameritech. The petitioners also allege that the proposal as amended fails to provide the assurance required by Section 22.917 that Ameritech has sufficient funds available and uncommitted to another cellular project. Petitioners submit that the financial exhibit does not show what portion of the Ameritech cellular capitalization plan approved by the Commission has been committed to other cellular projects. They contend that the balance sheet of Ameritech subsidiary, American Mobile Communications, Inc. (AMCI), shows that no funds are available for the Bloomington proposal. In addition, they assert that the other partners, namely NewVector and Midwest, have not provided evidence of firm financial commitments for their participation, even though the multi-market settlement agreement requires them to finance a share of the costs in proportion to their interests.

20. AMPS-Illinois responds that the intent of Ameritech to make the funding commitment to its subsidiary corporation in Bloomington, and to the limited partners through the subsidiary if necessary, is clear. AMPS- Illinois submits that Barnett is authorized to make a commitment for Ameritech because it is a matter of public record that with the restructuring of Ameritech, Barnett was elected an officer and director of Ameritech and also became president of Ameritech Enterprise Group. AMPS-

Illinois asserts that Barnett is not only responsible for overall operation of the holding company's subsidiaries including AMCI, but also as head of the enterprise group is responsible for cellular operations. Thus, it maintains that his statement of commitment is sufficient to satisfy the Commission's financial requirements. AMPS-Illinois also submits that the Commission has recognized that information concerning the financial status of the regional Bell Operating Companies like Ameritech is on file at the Commission and duplication of the information is an unnecessary burden.

21. Petitoners reply that the attempt to commit funds directly from the parent holding company raises questions under provisions of Section 22.901 of the Rules. They assert that this section requires Ameritech, the parent, to provide cellular service only through a structurally separate corporation. They also allege that Barnett, while in charge of Ameritech's unregulated businesses including its cellular subsidiary, is speaking for the parent company and committing revenues to unregulated activities in violation of Section 22.901.

DISCUSSION

22. We find that the Illinois Partnership has complied with Section 22.917 (b)(1)(i) of the rules which requires applicants obtaining financing from institutions other than recognized lending institutions to submit proof that such an entity has the funds available and uncommitted to another cellular applicant. The general partner's parent corporation, Ameritech, is such an unrecognized institution. The financing letter demonstrates that Ameritech has assessed the financial cost projections of the Bloomington application and possesses more than sufficient available assets. The general partner, AMPS-Illinois, has submitted sufficient information that shows that Barnett, in his positions with both Ameritech and Ameritech Enerprise Group, has the authority to make the financial commitment. Ameritech's financial status is confirmed by the financial information which is already on file and publicly available at the Commission. *See Fort Collins - Loveland MSA Limited Partnership*, 2 FCC Rcd 2520 (1987), at para.4.[19] Similarly, the financial status of the other partners making financial contributions, NewVector and Midwest, has already been filed with the Commission for markets included in the multi-market proposal.[20] For these reasons, we find that the Bloomington as well as Decatur applications, as amended, are not the frivolous and speculative applications which Section 22.917 (b)(1)(i) was intended by the Commission to deter. *See U. S. West NewVector Group, Inc.*, 2 FCC Rcd 5431 (1987). Given this evidence, we also find that petitioners' allegations of no express financial commitments from Ameritech to the minority partners or from NewVector and Midwest for their *pro rata* shares are meritless.[21] In addition, Ameritech has filed pursuant to the Commission's capitalization plan requirements a record of the total funding estimated for capitalizations of cellular systems. Further, Petitioner's allegation of the non-existence of structural separation between Ameritech and AMCI/AMPS-Illinois due to Barnett's capacity in the parent company and Ameritech Enterprise Group while committing funds to the subsidiaries is not supported by the record. It is not violative of Section 22.901 (c)(2) for an officer of a parent corporation to make the financial commitment on its behalf through its wholly-owned financial subsidiary to a wholly-owned cellular subsidiary as long as he is not also an officer of the cellular subsidiary. AMPS-Illinois has provided sufficient clarifying information that Barnett is not one of its officers.[22] We conclude that Ameritech has made a firm financial commitment to Illinois Partnership.

23. *Conclusion*. After reviewing all the facts and allegations before us, we conclude that the public interest, convenience, and necessity will be served by a grant of the request for approval of the multi-market settlement and outstanding applications for transfer of control. We have found no evidence that the transfer of control in the Decatur and Bloomington MSAs does not comply with the Commission's rules and satisfy its policy objectives for settlements among cellular applicants.

ORDERING PARAGRAPHS

24. Accordingly, IT IS ORDERED, That the Opposition To Joint Motion and Petition To Deny or Dismiss Amended Application in the Bloomington, Illinois MSA IS DENIED.

25. IT IS FURTHER ORDERED, That the Joint Contingent Motions To Dismiss, Request for Grant of Amended Application and Approval of Settlement Agreement and Related Relief, filed by Inland Cellular Telephone Company, US West NewVector Group, Inc., Ameritech Mobile Communications, Inc., Mount Pulaski Cellular Company and Midwest Cellular Associates in both the Bloomington and Decatur, Illinois MSAs, ARE GRANTED.

26. IT IS FURTHER ORDERED, That the applications of Illinois SMSA Limited Partnership, File No. 89173-CL-P-250-B-86, for the Bloomington Illinois MSA, and File No. 55066-CL-P-230-B-86, for the Decatur Illinois MSA, ARE GRANTED. Construction is not authorized at any location for which a final Federal Aviation Administration determination has not been submitted to the FCC and any required marking and lighting specifications have not been issued by the Commission. The authorization does not include the right to any interference protection in any areas outside the Bloomington and Decatur, Illinois MSAs and is further conditioned upon coordinating with current and future licensees in the adjacent markets and upon providing interference-free operations to licensees in those areas.

27. IT IS FURTHER ORDERED, That all other wireline applications in the Bloomington and Decatur, Illinois MSAs which are not a part of the above Settlement Agreement ARE HEREBY DISMISSED.

28. This order is issued under Section 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley,
Chief, Mobile Services Division

FOOTNOTES

[1] The parties have agreed to the following ownership interests in each of the four markets:

Partner	Interest
Ameritech Mobile Phone Service of Illinois (General Partner)	51.00%
Inland Cellular Telephone Co. (Limited Partner)	15.00%
Mt. Pulaski Cellular Company (Limited Partner)	15.00%
US WEST NewVector Group, Inc. (Limited Partner)	10.75%
Midwest Cellular Associates (Limited Partner)	8.25%

[2] Midwest, through Illinois Consolidated Telephone Company (Consolidated Illinois), filed in all three other markets. Consolidated Illinois is an affiliate of Illinois Consolidated Mobile Communications which is a 95 percent General Partner in Midwest.

[3] *See* Amendment filed November 19, 1986.

[4] *Central Illinois Cellular Limited Partnership*, 2 FCC Rcd 436 (1987).

[5] *See* Public Notice CL-87-265, released June 9, 1987.

[6] Consolidated Illinois and ALLTEL filed applications in Champaign and subsequently entered into this wireline settlement partnership. *See Public Notice* CL-87-114, released December 31, 1986.

[7] An application for this assignment and transfer of control has been approved. *See* Public Notice CL-87--333, released September 9, 1987, granting permit to the Illinois Partnership.

[8] In their pleadings, petitioners reiterate allegations made in a Joint Petition to Dismiss or Deny that they previously filed against the appliations of Bloomington MSA Limited Partnership. This matter and Bloomington Partnership's Motion to Strike it have been rendered moot by *Bloomington - Normal MSA Limited Partnership*, 2 FCC Rcd 5427 (1987), denying this prior petition. Bloomington Partnership's reply to petitioner's opposition addressed herein is thus also moot.

[9] Joint Motion to Dismiss, Attachment A, paragraph 5 states:

> Ameritech shall provide to Inland and Mt. Pulaski, pursuant to the terms of a mutually satisfactory loan agreement between those parties, *all funding required to be provided by Inland and Mt. Pulaski* . . . . Such loan agreement shall provide for repayment of amounts loaned *solely from Inland's and Mt. Pulaski's cash distributions from the partnerhsip*. (underliningadded).

[10] Airsignal International, Inc., 81 FCC 2d 472, at 475 (1980). *See* ISA Communications Services, Inc. 90 FCC 2d 938, at 942-947 (1982).

[11] Note 1 and paragraphs 5 and 6, *supra*. *See also Contel Cellular, Inc.*, 2 FCC Rcd 4005 (1987) and *Contel Cellular, Inc.*, 2 FCC Rcd 4773 (1987). (Settlement agreements between wireline applicants in the same market transferring 100 percent interest from the tentative selectee were approved because they were one element of a larger picture.)

[12] Application for Assignment and Transfer of Control, filed July 22, 1987, by ALLTEL. *See* Public notice CL-86-99, released March 24, 1986, at Section III; and *Madison Cellular Telephone Company*, 2 FCC Rcd 5397 (1987) (*Madison Decision).*

[13] With regard to the Decatur MSA, Midwest, through Consolidated Illinois, let expire the extension of time requested for filing a petition to deny after the settlement agreement was reached by the parties. The Commission requires that a party who believes it has grounds to file a petition pursue its allegation and not use them as a basis for settlement. *See Christina Communications*, 2 FCC Rcd 1971 (1987). If as Consolidated Illnois represented, it was seeking to preserve its rights to file a petition even after settlement had been reached, it should have proceeded to file it. However, we find here that Consolidated Illinois is not speculating in its interests for cash, but rather obtaining significant minority interests in three markets in addition to the one it has in the Champaign construction permit as well as participating in the Illinois Partnership. *Cf. Rodney A. McDaniel*, 2 FCC Rcd 5402 (1987); *Timothy Roper*, 2 FCC Rcd 3439 (1987) (where petitions were dropped in settlement for cash and rather insignificant minority interest, and settlement found acceptable).

[14] *See* Joint Motion, *supra*, at Attachment A (Multi-Market Settlement Agreement), para. 7

[15] In *Stockton* and *Napa*, *supra*, we found that we had not been provided with sufficient information by the settling parties to grant authorization to the post-lottery settlement group proposed on the basis of a trade and a number of sales of partnership interests. We also did not render a decision in *Madison*, *supra*, on the eligibility of the post-lottery settlement group for exemption under Section 22.23 (g)(4).

[16] In Decatur, the settlement also complies with the conditions for applying Section 22.23 (g)(4), which provides an exemption from the cut-off rules for the post-lottery broadening of settlements that were formed prior to the lottery. *See* Public Notice CL-86-99, released march 24, 1986, at 2. First, the tentative selectee, Decatur Partnership, was involved with Inland in a pre-lottery settlement group. *Id.* Second, Ameritech, the party obtaining a controlling interest in the suriving application as a result of the settlement, was an applicant in the market and is obtaining that interest through a trade of cellular aplication interests in other markets. *Id.* Third, the settlement group designated one of the applications that was part of the pre-lottery settlement group, Decatur Partnership, as the surviving application. *Id.*

[17] *See* note 9, *supra* ; Joint Motion to Dismiss, Attachment A, paragraph 5. The later filed Agreement of Limited Partnership of Illinois SMSA Limited Partnership (Partnership Agreement), which petitioners do not rely on, specifies this restriction on transfer of Inland's and Mt. Pulaski's interests. Partnership Agreement, Article 8.1 (iv) and (v).

[18] *See* paragraph 16, *supra*.

[19] Although Ameritech submitted with its letter the balance sheet of AMCI, its wholly-owned subsidiary, its latest balance sheets were filed with the Commission. AMCI, submitted on behalf of the Illinois Partership updated financial information regarding the parent corporation's balance sheets. Letter, April 24, 1987, to William J. Tricarico from Allen J. Arlow, AMCI. Thus, petitioner's allegation as to AMCI's deficit in retained earnings is irrelevant. Even if we considered AMCI's balance sheet, we would examine its total assets under the total assets ratio test and find ample financial backing.

[20] Amendment, February 24, 1987, for Decatur MSA, regarding NewVector's balance sheets. Amendment, October 27, 1986, for Champaign MSA, regarding balance sheets of Illinois Consolidated Telephone Company, which through an affiliate holds a 95% interest in Midwest. *See* n.2, *supra*.

[21] Petitioners' allegations are based on the multi-market settlement agreement. The parties to the settlement filed an addendum to this agreement stating that the agreement would be superceded by a definitive limited partnership agreement. The partnership

agreement was later filed but is not referred to by the petitioners in their allegations. The terms concerning the capital contributions in the partnership agreement, Article IV, assure us that the funding for construction and operation of the system will be available.

[22] At the request of the Mobile Services Division, in accordance with Section 1.1204 (b) (7), AMPS-Illinois provided clarifying information on Barnett's positions in regard to Ameritech Enterprise Group, AMCI, and AMPS-Illinois. AMPS-Illinois' response has been included in the record.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-293

In re Applications of

TIAB BROADCASTING CORPORATION (hereafter Tiab) File No. BPH-870615MJ

RESORT BROADCASTING SYSTEM, INC. (hereafter Resort) File No. BPH-870615MQ

For a Construction Permit
For a New FM Station on Channel 300A in
Tobyhanna, Pennsylvania

HEARING DESIGNATION ORDER

Adopted: June 1, 1988; Released: June 15, 1988

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. Attempts to obtain Federal Aviation Administration (FAA) clearance through the Commission's Antenna Survey Branch and the following applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by the applicant below would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding. *APPLICANT* : Resort

3. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the following applicant would constitute a hazard to air navigation: Resort

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted, if any.

5. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

6. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20054.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, not later than **July 6, 1988,** file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 15, 1988

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for responding to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. Typically, these responses to individuals are not released to the public or published in the FCC Record (See 0.445(a) of the rules).

However, in order to provide the public with a clearer understanding of this new process, these decisions will be made available to the public. Periodically, the Managing Director will release a Public Notice listing the decisions he has made on these matters. The decisions will then be placed in General Docket 86-285. A copy of the decision will also be placed in the appropriate docket, if one exists. In the future, it may be decided to publish only those decisions that establish new precedents or may be of wide interest. All decisions will continue to be placed in the appropriate docket.

The following Managing Director decisions are released for information:

Wanda B. Blair - Petition for Reconsideration Granted - Channel 290, St. Stephen, SC (February 26, 1988)

James E. Hodges - Refund of Commission's Fee Denied (March 15, 1988)

D & P Bays Communications - Petition for Reconsideration Granted Nunc pro tunc - Cellular Markets #257 and #269 (March 25, 1988)

IDB Communications Group, Inc. - Request for Fee Determination and a Partial Fee Refund Granted (March 28, 1988)

George W. Casarett - Petition for Reconsideration Granted - Cellular Market #257 (March 28, 1988)

G & D Communications, Inc. - Refund of Hearing Fee Denied (March 29, 1988) (MM Docket No. 87-330)

Sunshine Broadcasting Company, Inc. - Petition for Reconsideration Denied - Channel 258A, Socastee, SC (March 31, 1988)

Brightness Ministries, Inc. - Waiver of Commission's Fee Denied (April 1, 1988)

For further information, contact Thomas M. Holleran at (202) 632-5316.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. CSG-88-037-P/L

Application for authority to construct an international earth station at Pearl City, Hawaii, for provision of INTELSAT Business Services

ORDER AND AUTHORIZATION

Adopted: June 8, 1988; Released: June 17, 1988

By the Chief, International Facilities Division:

1. The Commission is considering an application filed on April 4, 1988, and supplemented by letters of April 12, 1988, and May 27, 1988, by American Telephone and Telegraph Company (AT&T), requesting authority, pursuant to Title III of the Communications Act of 1934 and Sections 201(c)(4), (c)(6) and (c)(7) of the Communications Satellite Act of 1962 to construct and operate international earth station facilities at Pearl City, Hawaii, for provision of INTELSAT Business Services (IBS). The application was placed on public notice on April 20, and 27, 1988. No comments were received. The applicant has been granted blanket authority to establish and operate channels of communication between the U.S. and various overseas points for provision of IBS services.[1]

2. The proposed earth station will consist of a 13 meter antenna which conforms with INTELSAT Standard B technical parameters and communicates with an appropriate INTELSAT satellite in the Pacific Ocean Region in the 6/4 GHz band. The earth station will be constructed at Pearl City, Hawaii, and will be used to provide a full range of IBS services to customers in the area.

3. In its Report and Order in the *Earth Station Ownership Proceeding* in CC Docket No. 82-540, the Commission modified its policy on the ownership and operation of U.S. international earth stations that access the INTELSAT system by permitting carriers, individually or jointly, to own and operate their own earth station facilities.[2] In that Order, the Commission distinguished between IBS and/or television earth stations and multipurpose stations. It determined that earth stations dedicated to providing IBS and/or television services do not raise the same concerns about impact on the INTELSAT system that are raised by multipurpose stations. It also determined that the public interest requires that IBS be introduced in the U.S. as soon as possible. The Commission therefore concluded that it would consider only minimal legal, financial, and technical qualifications of the applicant as required by Sections 308 and 319 of the Communications Act of 1934, as amended, when processing IBS and television service applications. The Commission further concluded that absent special problems, it would treat these applications as routine and expeditiously process them.[3] The Commission has granted many applications to construct and operate IBS earth stations based on this approach.[4]

4. AT&T has the legal, technical, and financial qualifications to construct and operate the proposed earth station. AT&T is a common carrier pursuant to the Communications Act of 1934 and provides various international services. The proposed earth station complies with INTELSAT Standard B technical parameters for IBS stations. AT&T has completed the necessary frequency coordination.

5. The scope of operation of the proposed station will be the same as that permitted by the Commission in previous IBS authorizations. We will limit the authorization to the provision of IBS and those video services compatible with the station's digital format operation. To the extent that the applicant may seek to provide certain newly proposed INTELSAT services which fall within the IBS/television service category, we will not restrict operation of the proposed station. However, it may not provide any service which falls outside the IBS/television service category. Any authorization to use the proposed station as a multipurpose earth station would require a determination as to traffic and revenue diversion from existing multipurpose earth stations that may result.

6. Upon consideration of the application, we find that authorization of the requested services and facilities is in the public interest, convenience and necessity.

7. Accordingly, IT IS ORDERED pursuant to Sections 304, 309, and 319 of the Communications Act of 1934, and Section 201(c) of the Communications Satellite Act of 1962, that application File No. CSG-88-037-P/L IS GRANTED, and AT&T is authorized to construct and operate the proposed earth station at Pearl City, Hawaii, to provide IBS and related digital video services.[5] Before the completion of equipment installation and facility activation, however, the applicant shall provide the Commission with a summary of equipment which was actually installed.

8. This order is issued under Section 0.291 of the Commission's rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTES

[1] *See* American Telephone and Telegraph Co., *et al*, File No. I-T-C-85-035 *et al.*, Mimeo No. 3220, released March 18, 1985.

[2] Earth Station Ownership, 100 FCC 2d 250 (1984).

[3] Upon grant of an IBS/television service application, the applicant will be issued a combined Radio Station Construction Permit and License (FCC Form 456-P). While the Commission will limit the use of the facilities authorized for provision of IBS or television services to these services, carriers may seek additional authorization if they desire to use these facilities as multipurpose earth stations.

[4] *See* the cases cited in Satellite Gateway Communications, Inc., Mimeo No. 2696 (released March 4, 1986) and American Telephone and Telegraph Co., Mimeo No. 3327, (released March 25, 1986).

[5] This authorization is not to be construed as permitting the provision of IBS between earth stations located within the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Application of

WARREN AMERICAN OIL COMPANY — File No. 15025-CL-P-135-A-86

For a Construction Permit in the Domestic Public Cellular Radio Telecommunications Service for the Eugene-Springfield, Oregon Metropolitan Statistical Area

MEMORANDUM OPINION AND ORDER

Adopted May 9, 1988; Released June 17, 1988

By the Commission:

1. Swede Development Company (Swede) has filed an application for review of a Mobile Services Division (MSD) order denying its petition to deny the above-captioned application of Warren American Oil Company (WAOC). *See Warren American Oil Company*, 2 FCC Rcd 3228 (1987) (*MSD Order*). WAOC filed an opposition. For the reasons set forth below, we affirm the MSD action.

2. Initially, we note Swede's admission that the facts and arguments it is now raising were also raised before and rejected by the Commission in another proceeding by a different petitioner in a different metropolitan statistical area. *See Warren American Oil Company*, FCC Rcd 227 (1986), *recon. denied*, 2 FCC Rcd 1264 (1987), *application for review denied*, 2 FCC Rcd 3505 (1987) (*Warren*). Swede states that it is filing this application for review to preserve its right on appeal. Moreover, the three issues raised by Swede in its application were disposed of in the *MSD Order*. Specifically, Swede alleges that: (1) WAOC's authority specified in its corporate charter is limited to oil and gas exploration and, thus, it could not lawfully enter the cellular telephone business; (2) WAOC failed to take the necessary corporate action to commit the needed funds to construct and operate its proposed cellular system in a timely manner; and (3) WAOC lacks the character qualifications to be a Commission licensee because it disingenuously argued contradictory legal positions involving the "letter perfect" standard, depending on its status as a tentative selectee or challenger.

3. As to Swede's first allegation, WAOC has amended its corporate charter to include a general-purpose clause to confer authority to engage in any lawful activity. *MSD Order*, *supra* at para. 3; *see also Warren*. Because neither the Commission's Rules nor FCC Form 401 require cellular applicants to submit their Articles of Incorporation to the Commission when applying, neither the initial deficiency nor subsequent change in the Articles results in a violation of our "letter perfect" standard for cellular applications nor causes the application to be unacceptable for filing. In light of this fact, an applicant may amend its Articles during the pendency of the application. As to Swede's second allegation, a resolution of WAOC's board of directors had authorized expenditure of sufficient funds to construct and operate the proposed cellular facilities for one year. *MSD Order*, *supra* at para. 3; *see also Warren*. Although the Board's authorization was made after Swede filed its petition to deny, we do not find such after-the-fact action fatal because it merely ratified the WAOC President's prior financial commitments. Even if there may have been a question as to the President's actual authority to bind the corporation prior to the Board's ratification of his acts, the President had apparent authority to do so for purposes of this Commission's processes. The President signed the original application to the Commission as well as other documents associated with that application including the financial commitment and is also a member of the Board of Directors of WAOC. It is not this Commission's practice to insist on being shown the resolution of the Board of Directors' authorizing the particular officer or agent to transact the particular business which he assumes to conduct, and we have little doubt that the President's commitment would have bound the corporation as against third parties under these factual circumstances. *See generally* Fletcher's Cyclopedia of Corporations, Vol. 2, Section 449, at 359-61 and Section 451, at 373-75 (1982). As to Swede's third allegation, the MSD properly concluded that WAOC's interpretations of the "letter perfect" standard do not raise a character qualifications issue that would warrant denial of WAOC's application. *See MSD Order*, *supra* at para. 3; *see also Warren*. WAOC's arguments in other proceedings were addressed, where relevant, within the context of those proceedings. We conclude that WAOC could not be faulted for arguing the most beneficial interpretation, even if conflicting, pending our clarification of the exact scope and applicability of the standard set forth in *Johnstown Cellular Communications*, 1 FCC Rcd 1164 (1986) (*Johnstown*). Since WAOC's legal positions were taken before *Johnstown*, no material issue of WAOC's character qualifications was raised by the matter.

4. Based on the foregoing, we conclude that nothing has been raised in Swede's application for review showing that the MSD erred in granting WAOC's cellular application.

5. Accordingly, IT IS ORDERED that the application for review filed by Swede Development Company IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Doug Halonen (Crain Communications Inc.) FOIA Control No. 88-6

On Request for Inspection of Records

MEMORANDUM OPINION AND ORDER

Adopted: June 8, 1988; Released: June 17, 1988

By the Commission:

1. The Commission has before it an Application for Review filed by Mr. Doug Halonen seeking review of a February 5, 1988 initial ruling by the Managing Director that denied, in part, Mr. Halonen's Freedom of Information Act (FOIA) request. By that request, Mr. Halonen sought copies of Commission records documenting all expenses for which Chairman Dennis Patrick was reimbursed in 1987, and a copy of the Chairman's appointments calendar for 1987.

2. The Managing Director identified and released the Commission records documenting the above-described expenses. With respect to the appointments calendar, however, the Managing Director found that, under the principles set forth in *Bureau of National Affairs v. U. S. Department of Justice* (*BNA*), the calendar was not an agency record subject to the FOIA disclosure provisions. 742 F.2d 1484 (D.C. Cir. 1984). Therefore, access to the calendar was denied.

3. In his Application for Review, Mr. Halonen questions the Managing Director's interpretation of the principles enunciated in *BNA*, and the application of those principles to Chairman Patrick's calendar. Thus, Mr. Halonen urges the Commission to reverse the Managing Director's ruling and provide access to the requested calendar.

4. We have fully reviewed the foregoing and find no reason to disturb the rationale, or result, of the Managing Director's ruling.

5. ACCORDINGLY, pursuant to 47 U.S.C. § 155(c)(5) and 47 C.F.R. § 1.115(g),[1] the Application for Review filed by Doug Halonen IS DENIED.

6. The Requester may seek judicial review of this decision pursuant to 5 U.S.C. § 552(a)(4)(B).

The officials responsible for this action are the following Commissioners: Dennis R. Patrick, Chairman, James H. Quello, and Patricia Diaz Dennis.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster III
Acting Secretary

FOOTNOTE

[1] This statute and rule provide that the Commission may deny the Application for Review without specifying any reasons for the action taken.

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re Application of

SACRAMENTO VALLEY LIMITED PARTNERSHIP — File No. 42881-CL-CP-86

for License to Cover its Construction Permit for Station KNKA463 to operate on Frequency Block B in the Domestic Public Cellular Radio Telecommunications Service to serve the Chico, California Metropolitan Statistical Area

MEMORANDUM OPINION AND ORDER

Adopted June 10, 1988; Released June 17, 1988

By the Chief, Mobile Services Division:

1. On March 29, 1988, Sacramento Valley Limited Partnership (SVLP) filed an application for a radio station license to cover its construction permit for Station KNKA 463 to operate on frequency block B in the Domestic Cellular Radio Telecommunications Service in Chico, California. Cellular 1 of Chico, Inc. (Cellular 1) has filed a petition for deferral of operating authority and SVLP has replied.

2. Cellular 1 requests that the Commission delay granting operating authority to SVLP for three months, or until Cellular 1 is prepared to commence operations. Cellular 1 maintains that SVLP's headstart in the Chico MSA will result in anticompetitive service offerings because the Chico market, being ranked 215th in size, possesses a limited demand for cellular telephone service. Cellular 1 states that it expects to commence operations in early August 1988, and argues that a prompt grant of operating authority to SVLP would result in a headstart period of roughly three months, during which SVLP would have a critical advantage in acquiring those subscribers "who are certain to subscribe to cellular service as soon as it becomes available." Cellular 1 notes that it will be difficult for a late entrant to convince customers to change service once they are on line, which could prove to be a "fatal" disadvantage, and argues that the three month delay in SVLP's grant would not materially delay rapid initiation of cellular service to Chico, while the simultaneous commencement of operations by both licensees would afford potential subscribers a choice of service providers at the outset.

3. In its opposition, SVLP asserts that Cellular 1 has failed to provide evidence that a wireline headstart would have a "demonstrable impact . . . upon competition" in the Chico MSA, as required by the *Memorandum Opinion and Order, Ameritech Petition for Declaratory Ruling*, FCC 85-301, released June 14, 1985. SVLP argues that Cellular 1 has not taken any of the steps required by California law which would enable it to mitigate the effects of SVLP's headstart. Specifically, SVLP notes that Cellular 1 has not applied with the California Public Utilities Commission (CPUC) for authorization to begin constructing its facilities, and that Cellular 1 has not applied with the CPUC for authority to resell cellular service. Cellular resale, argues SVLP, is a well established method for a second cellular carrier to build a customer base during its own period of construction. By failing on its own to pursue these avenues, SVLP argues that Cellular 1 itself is responsible for the failure to provide subscribers a choice, and that delay of SVLP's operating authority is not warranted under these circumstances.

DISCUSSION

4. It is well settled that the public interest is best served by the expeditious provision of reliable cellular service. *EauClaire Cellular Telephone Company*, DA 88-736, released May 26, 1988. *See also Cellular Report and Order*, 86 FCC 2d 469, 491 n.57 (1981). The fact that an applicant or licensee may suffer economic harm is not enough to warrant delaying the implementation of cellular service. The burden is on the petitioner to demonstrate that early wireline entry will so "jeopardize the development of a competitive market" as to be contrary to the public interest. *Eau Claire*, *supra*, at para. 5.

5. Cellular 1 has provided no basis for concluding that deferral of SVLP's operating authority would further the public interest. Cellular 1's main argument, that the Chico market possesses a limited demand for cellular service and may be unable to support the entry of a second system, amounts to little more than "general unsupported allegations of harm", and is unacceptable under the *Cellular Report and Order*, *supra*, at 491, n. 57. *See also*, *Ameritech, Declaratory Ruling*, *supra*, at para. 11; *Miami CGSA, Inc.*, Mimeo No. 4507, released May 31, 1984, at para. 11.

6. Furthermore, Cellular 1's argument is severely weakened by the fact that it has not taken the necessary steps to mitigate any competitive advantage that SVLP may gain by being the first system in operation. The headstart doctrine is predicated on our recognition of the fact that some non- wireline applicants are unable to complete construction prior to the wirelines, despite a good faith effort on their part to do so. Here, however, Cellular 1 has not even obtained an authorization from the CPUC to *begin* constructing its facilities. Moreover, Cellular 1 has also failed to obtain a resale authorization from the CPUC. Clearly, the reselling of cellular service by a non-wireline permittee during its period of construction is an effective means of establishing a market presence and mitigating any competitive disadvantage. By its inaction, Cellular 1 has exacerbated its own situation. We believe that the public interest would best be served by allowing SVLP to provide cellular service to the Chico MSA.

7. Accordingly, IT IS ORDERED, that the application of the Sacramento Valley Limited Partnership for a license to cover its construction permit in the Chico MSA, File no. 00969-CD-L-88, is GRANTED.

8. IT IS FURTHER ORDERED, that the Petition for Deferral of Operating Authority filed by Cellular 1 of Chico, Inc., IS DENIED.

9. This order is issued under Section 0.291 and Section 1.108 of the Commission's Rules and is effective on its adoption date. Petitions for Reconsideration under Section

1.106 and applications for review under Section 1.115 may be filed within 30 days of the date of public notice of this Order. *See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley, Chief
Mobile Services Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 80-286

In the Matter of

MTS and WATS Market Structure

Amendment of Part 67 (New Part 36)
of the Commission's Rules and
Establishment of a Joint Board

ORDER

Adopted: June 10, 1988; Released: June 13, 1988

By the Chief, Common Carrier Bureau:

1. The United States Telephone Association (USTA) requests that the Docket 80-286 Joint Board extend the time for filing comments, data, and replies in response to the Order Inviting Comments and Request for Data released May 16, 1988.[1] That *Order* sought comment on a proposed method of categorizing and allocating marketing expenses that may more accurately reflect cost-causation principles. USTA requests that the time for filing comments and data be extended from June 15, 1988 to July 5, 1988, and that the time for filing replies be extended from July 15, 1988, to August 5, 1988.

2. In support of its request, USTA states that the filing dates do not provide sufficient time for the local exchange carriers (LECs) to accurately respond to the data request. USTA contends that additional time will be required by the LECs to ensure that they receive and incorporate USTA's guidelines into their programs. USTA states that only recently, in an *ex parte* meeting with the Commission and Joint Board staff on May 24, 1988, could it clarify the procedures and assumptions to be used by parties in completing the data request. USTA states that it must now provide this information to its members to ensure that the data submitted will be consistent and reliable.

3. Although we recognize that the current filing dates may be burdensome for some carriers, USTA has not persuaded us that a twenty day extension of the comment date is warranted. We believe an extension of fifteen days will allow the carriers sufficient time to ensure that the data filed will be accurate, consistent and reliable. We will therefore extend the date for filing comments and data until June 30, 1988. We believe, however, that eighteen days is an adequate time for the preparation of reply comments. We will therefore extend the date for filing replies until **July 18, 1988.**

4. Accordingly, IT IS ORDERED, That the time for filing comments, data, and reply comments in response to the Order Inviting Comments and Request for Data released May 16, 1988, in CC Docket No. 80-286 is EXTENDED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock, Chief
Common Carrier Bureau

FOOTNOTE

[1] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket 80-286, FCC 88J-1, released May 16, 1988 (*Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC DOCKET 78-72,
PHASE I

PUBLIC NOTICE

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON NECA'S PETITION FOR WAIVER OF SECTION 69.602(e) OF THE COMMISSION'S RULES

Released: June 14, 1988

On June 7, 1988, the National Exchange Carrier Association (NECA) filed a petition for waiver of Section 69.602(e) of the Commission's Rules regarding the composition of the NECA Board of Directors. The requested waiver would allow NECA to elect a Board of Directors for 1989 that would be comprised of three members from Subset 1 telephone companies, three members from Subset 2 companies, and nine members from Subset 3 companies. NECA requests that the Commission rule on its petition prior to August 1, 1988, in order for NECA to provide timely notice and to conduct official activities associated with the 1989 Board of Directors election.

Under the present Rules, in 1989 the NECA Board would be comprised of six members representing Subsets 1 and 2 companies jointly, and nine members representing Subset 3 companies. According to NECA, the requested waiver would ensure that representatives from both Subset 1 and Subset 2 companies would serve on the Board, and the total number of Board members will remain the same. NECA states that in past years, it has been granted waivers of the Commission's Rules regarding the composition of the NECA Board in order to balance the interests of the NECA subset companies.

In January 1988, NECA filed with the Commission a Petition for Rule Change (Public Notice Report No. 1711, Petitions for Rule Making Filed, released February 5, 1988) requesting that the composition of the Board of Directors be changed for 1989 and thereafter to include three members from Subset 1, three from Subset 2, and nine from Subset 3 companies. NECA states that the requested waiver is an interim measure pending a decision by the Commission on the NECA Petition for Rule Change.

Interested parties should file comments on NECA's petition by **June 28, 1988,** and reply comments by **July 5, 1988,** with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Diane Cornell, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of NECA's petition can be obtained from ITS at (202) 857-3800.

For further information contact Diane Cornell, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-9342.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: June 8, 1988

PLEADING CYCLE ESTABLISHED FOR COMMENTS ON CONTEL'S PETITION FOR WAIVER OF SECTIONS 69.105 AND 69.205 OF THE COMMISSION'S RULES

On May 31, 1988, Contel Corporation (Contel) filed with the Commission a petition for waiver of Sections 69.105 and 69.205 of the Commission's Rules. If Contel elects to withdraw from the National Exchange Carrier Association (NECA) common line pool on April 1, 1989, the requested waiver would allow Contel to establish a system-wide carrier common line (CCL) originating charge at a level equal to the nationwide industry average. The remaining CCL revenue requirement would be recovered through a Contel system-wide terminating CCL charge. Contel observes that under present rules, originating and terminating CCL rates will be equalized effective December 1, 1988. Contel contends that the issues raised in its petition are critical to its decision on whether to leave the common line pool and file its own CCL tariff effective April 1, 1989.

Contel believes that there are unique circumstances to justify its waiver request. According to Contel, although there are other exchange carriers that serve high-cost markets, no other carrier serves as many geographically dispersed markets or experiences greater fluctuation in the per minute CCL revenue requirements of its individual operating companies. Contel claims that grant of the waiver would be in the public interest because it would facilitate Contel's withdrawal from the common line pool.

Interested parties should file comments on Contel's petition by **July 8, 1988** and reply comments by July 29, 1988, with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy should also be sent to Peggy Reitzel, Common Carrier Bureau, FCC, Room 544, 1919 M Street, N.W., Washington, D.C. 20554, and to the Commission's contractor for public service records duplication: International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Copies of Contel's petition can be obtained from ITS at (202) 857-3800.

For further information contact Peggy Reitzel, Policy and Program Planning Division of the Common Carrier Bureau, at (202) 632-4047.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-136

In the Matter of

BELL ATLANTIC Transmittal No. 241
Revisions to Tariff F.C.C. No. 1

SOUTHWESTERN BELL TELEPHONE COMPANY Transmittal No. 1650
Revisions to Tariff F.C.C. No. 68

AMERITECH SERVICES Transmittal No. 186
Revisions to Tariff F.C.C. No. 2

SOUTHWESTERN BELL TELEPHONE COMPANY Transmittal No. 1656
Revisions to Tariff F.C.C. Nos. 68 and 69

ORDER

Adopted: June 7, 1988; Released: June 8, 1988

By the Chief, Common Carrier Bureau:

1. By the above-referenced transmittals, various local exchange carriers (LECs) have proposed revisions to their tariffs for access services to establish rates and charges for Special Access Individual Case Basis (ICB) High Capacity DS3 offerings.[1] The revisions are scheduled to become effective on dates ranging from June 9, 1988, to July 1, 1988.[2]

2. On March 28, 1988, the Bureau released an Order initiating an investigation of a number of LECs' proposed ICB rates, designating for investigation issues concerning the LECs' continued use of ICB rates for DS3 offerings, and establishing a pleading cycle. [3] The above-referenced transmittals raise the same issues as those transmittals subject to our *Designation Order*. Therefore, the instant transmittals will be subject to the outcome of that investigation. We also grant the LECs listed above special permission to advance the effective dates of these transmittals.

3. Accordingly, IT IS ORDERED that Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 241, Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal No. 1650, Ameritech Services, Tariff F.C.C. No. 2, Transmittal No. 186, and Southwestern Bell Telephone Company, Tariff F.C.C. Nos. 68 and 69, Transmittal No. 1656, are subject to the investigation instituted in CC Docket No. 88-136.

4. IT IS FURTHER ORDERED that the local exchange carriers listed in paragraph 3, *supra,* may file tariff revisions, to be effective on not less than one day's notice, in order to advance the effective dates of the above-referenced transmittals. For this purpose, we waive Sections 61.56, 61.58, and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, and assign Special Permission No. 88-269.

5. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions ARE SUSPENDED for one day.

6. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, all local exchange carriers subject to this investigation shall keep accurate account of all amounts received pursuant to Individual Case Basis rates for DS3 services which are the subject of such investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

[1] We note that while the LECs' filings also proposed ICB rates for other services, this Order deals only with the proposed ICB rates for DS3 and DS3-equivalent services.

[2] No petitions have been filed to reject, suspend, or investigate these transmittals.

[3] Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Designation Order).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-1,
Phase II

In the Matter of

Annual 1988 Access Tariff Filings

ERRATUM

Released: June 9, 1988

1. On May 20, 1988, the Common Carrier Bureau released an Order designating issues for investigation in the above-captioned proceeding. At paragraphs 8 and 9 and notes 9 and 11 of that Order, we established listings of those local exchange carriers required to submit showings of cable and wire facilities (CWF) costs in their direct cases. The reference in both paragraphs should be to paragraph 5 of that Order, rather than to paragraph 3.[1] Note 11 is accordingly corrected to reflect this reference to paragraph 5 rather than paragraph 3.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTE

[1] Local exchange carriers required to include CWF cost showings in their direct cases are: each Bell Operating Company, Cincinnati Bell Telephone Company, the United Telephone Companies, the General Telephone Operating Companies, and the Southern New England Telephone Company.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules

ORDER

Adopted: May 25, 1988; Released: May 31, 1988

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 24, 1988, we released a *Public Notice* [1] proposing forms and instructions for an automated report to monitor the forecasted and actual use of telephone plant investments used for both regulated and nonregulated purposes. In response to the *Public Notice*, four parties have filed comments and five parties have filed replies.[2] In this Order, we adopt, with certain modifications, the forms and instructions proposed in the *Public Notice*. We also adopt the format and media specifications. The revised reports and instructions can be found in the Attachment.

II. BACKGROUND

2. In the *Joint Cost Order* [3] the Commission required that certain telephone plant investments used for both regulated and nonregulated activities be allocated on the basis of forecasted regulated and nonregulated usage.[4] The Commission stated that it intended to monitor the cost allocation process and to establish a data base for comparing actual and forecasted usage, but deferred the development of permanent reporting requirements to implement these intentions to the *ARMIS Order*.[5] The *ARMIS Order* directed the staff to develop an automated report to collect the data needed to implement the *Joint Cost Order* and to issue the details of this report in a public notice.[6]

3. The *Public Notice* proposed forms and instructions for two reports. The first report, the Forecast Report, requires a carrier to submit forecasts of expected regulated and nonregulated investment usage. These forecasts are intended to be an integral part of the cost support that accompanies the carrier's proposed access tariffs for the next calendar year. The Commission reviews these cost support filings to determine the proportion of the carrier's total projected expenses for the next year to be recovered from interstate ratepayers.

4. The Forecast Report is comprised of three tables. Table I contains, for each investment pool[7] requiring forecast allocation,[8] the forecast regulated and nonregulated usage (in minutes of use, messages, lines, etc.) for each of the next three calendar years. The last column of Table I shows the highest forecast ratio of nonregulated to total usage (highest nonregulated ratio). Table II reports the carrier's projection of how much it expects will be in each investment pool for the next access tariff year and allocates that investment between regulated and nonregulated activities based upon the highest nonregulated ratio from Table I. Table III displays the forecast allocations for all central office and cable and wire investment pools, including the directly assigned cost pools.

5. The second report, the Actual Usage Report, requires a carrier to report the actual levels of regulated and nonregulated investment usage for the previous year. The actual usage will be compared with the previously reported forecasts. When actual nonregulated usage of investment exceeds the forecast usage, the *Joint Cost Order* requires that investment be reallocated to nonregulated activities and adjustments be made to compensate regulated ratepayers for the overallocation of investment to regulated activities in the next access tariff review.

6. The Actual Usage Report is comprised of three tables. The first two tables (Tables IV and V) cover the same investment pools as reported in Tables I and II of the Forecast Report. Table IV contains the actual dollar allocations to regulated and nonregulated activities that were made during the previous year. Table V contains actual units of regulated and nonregulated usage. The third table (Table VI) displays the actual allocations for all central office and cable and wire cost pools.

III. DISCUSSION

7. Although the commenting parties were generally in favor of the reports proposed in the *Public Notice*, they suggested several changes. We consider the substantive suggestions first and then turn to the editorial and technical suggestions.

A. *Substantive Changes*

8. *Waiver Requirements*. USTA, BellSouth, and PacTel argue that the instructions for Table I, column (i), and Table II, column (g)[9] imply that a waiver is required to freeze the use allocator under the declining demand exception to the *Joint Cost Order*'s cost allocation rules.[10] They contend that the instructions should be modified because the *Joint Cost Order* only requires a waiver when a carrier wishes to transfer nonregulated investment to regulated activities. They propose that we correct the instructions by deleting the reference to declining demand.

9. The *Joint Cost Order* restricted its general allocation rules so that nonregulated investment could not decrease from one year to the next, but made two exceptions. The first exception, which applies to investment transferred from nonregulated to regulated activities, requires a waiver.[11] The second, which applies to freezing the allocator for investment cost pools in which total demand has begun to decline and is expected to decline until exhausted, does not require a waiver.[12] Thus, the commenters are correct that a demand allocator may be frozen without waiver. We reject the proposed correction, however, because it does not explain what should take place in both circumstances described above (*i.e.* transfers from regulated to nonregulated activities and freezes of demand allocators due to declining demand). To describe adequately what must take place, the instructions for both Table I, column (i) and Table II, column (g) are amended to read as follows:

Column (i) - For each cost category, enter the highest of the column (h) figures for the three forecast years. Enter this value as a ratio rounded to four decimal places in the row for the third forecast year; in the rows for the first and second forecast years, leave this column blank. Exception: When total demand has begun to decline and is expected to continue to decline until exhausted, the peak ratio (calculated as column (g) divided by column (d) on Table II) is frozen at its highest previous level. A footnote is required to identify the year and the Table II filing date from which the peak ratio is derived.

Column (g) - Enter the higher of column (e) or column (f). Exceptions: (1) If total demand has begun to decline and is expected to continue to decline until exhausted, enter column (e); (2) if a waiver to transfer nonregulated investment to regulated activities has been granted, enter column (e) or (f) as appropriate, minus the amount of transferred investment. A footnote is required if a waiver has been granted. The footnote should identify the date and amount of the investment transferred and the date the waiver was granted. This represents the gross nonregulated amount that is to be removed under Part 64 of our rules for the prospective access tariff year.

10. *Reporting Actual Nonregulated Investment.* USTA, BellSouth, and PacTel object to the instructions for Table IV, column (e), which read in part "Calculate [the actual investment allocated to nonregulated activities] by multiplying column (d) by Table I, column (i) or enter the amount from Table II, column (g), whichever is greater."[13] They argue that this language would force them to report actual nonregulated investment as the higher of actual or forecasted investment times forecasted nonregulated usage. They state that the *Joint Cost Order* requires actual investment to be used as the basis for allocations. They propose to correct this error by deleting the reference to Table II, column (g) from the instructions.

11. The instructions for Table IV, column (e) are intended to implement the *Joint Cost Order*'s restriction that nonregulated investment may not decline from year to year. We agree with the commenting parties that the *Joint Cost Order* intended its restriction to apply to actual and not forecasted nonregulated usage. The reference to Table II, column (g) is a typographical error; the reference should have been to Table II, column (f). Table II, column (g) refers to the highest *forecast* nonregulated usage reported. Table II, column (f) refers to the highest *actual* nonregulated use reported. We therefore amend the instructions for Table IV, column (e) to read:

> Column (e) - Enter the actual dollar amount of total gross investment allocated to nonregulated activities during the calendar year. Calculate this amount by multiplying column (d) by Table I, column (i) or enter the amount from Table II, column (f), whichever is greater. If the amount in Table II, column (f) is greater, indicate this in a footnote.

The corrected instructions require carriers to report the actual amount of investment allocated to nonregulated activities as the higher of actual total investment times the forecast nonregulated ratio, or the highest previous dollar allocation of nonregulated investment. We believe that this fully addresses the commenters' objection and implements the *Joint Cost Order* requirement that the dollar allocation of investment to nonregulated activities does not decline from one period to the next.

12. *Proposed Additional Monitoring Tables.* Several commenting parties suggest that we augment the *Public Notice* reports to facilitate the monitoring process. PSCDC suggests that an additional table be created to provide an historical comparison of the forecasted and actual usage data over time.[14] The form would cover the current year and five previous years, and would require, through footnote or other means, an explanation of changes in forecast and actual usage. MCI proposes that we create an additional table to show the absolute and percentage differences between actual and forecasted nonregulated and regulated investment allocations.[15] MCI argues that the current reports require the analyst to manually compare Tables III and VI and that the additional table would identify instantly any misallocation. USTA proposes to add a column to Table V to show the forecasted nonregulated ratio reported in Table I, column (i). USTA states that this would allow easy verification that the actual nonregulated usage did not exceed forecasted nonregulated usage.[16]

13. Bell Atlantic argues that PSCDC's proposal would needlessly inflate the reporting requirements while supplying the Commission with no new information since all the historic information would already have been filed in previous reports.[17] BellSouth objects to PSCDC's proposal on the grounds that historic data are of no use because the reports proposed in the *Public Notice* already allow for the immediate detection and correction of underallocations to nonregulated activities.[18] NYNEX also objects to PSCDC's proposal, stating "the purpose of the automated reports is to supply the raw data the Commission needed to administer its . . . rules . . . not to provide arithmetical exercises for the convenience of outside parties."[19] PacTel argues that the proposal would add an unnecessary burden without accomplishing the Commission's goals.[20] Additionally, PacTel states that PSCDC's proposal would require a Rule Making to implement. USTA argues that PSCDC's proposal would require carriers to file duplicative data and that one of the Commission's goals in its *ARMIS Order* was to minimize such filings.[21]

14. The telephone companies also object to MCI's proposal for an additional table. Bell Atlantic believes that USTA's proposal of an additional column for Table V should satisfy MCI's request without the additional burden of another table.[22] BellSouth argues that MCI's proposal, which would compare the absolute amounts of forecasted and actual nonregulated investment, would be misleading and confusing.[23] NYNEX also objects to MCI's proposal, arguing that comparisons of actual and forecasted regulated investment are irrelevant; that the additional form goes beyond supplying the Commission with the raw data it needs to administer its rules; and that USTA's proposal of an additional column to Table V would more clearly show the comparison of actual and forecasted nonregulated investment.[24] PacTel objects to MCI's proposed comparison on grounds similar to those presented by BellSouth.[25] It also argues that MCI's proposal would require the submission of redundant data. USTA points out that the reports proposed in the *Public Notice* are auto-

mated reports and that the comparisons MCI wishes to make are readily accomplished using simple computations.[26]

15. In the *Public Notice* we did not propose a report comparing forecast and actual nonregulated investment usage because the monitoring and enforcement of the allocation rules, restrictions and exceptions adopted in our *Joint Cost Order* are complex processes and involve comparisons between a large number of reports. The proposals of PSCDC, MCI, and USTA do not overcome our original conclusion that monitoring and enforcement cannot be readily accomplished through a simple form, since each proposal falls far short of revealing all the potential violations of the *Joint Cost Order* investment allocation restrictions.[27] Therefore, we reject the proposed additional reporting.

16. *Reporting by Wire Center and Cable Run.* PSCDC in its comments also proposes that all reports be submitted on either a switching entity and cable run or a wire center and cable run basis, instead of a cost category basis.[28] PSCDC argues that reporting by cost category would allow carriers to reallocate individual pieces of investment from nonregulated to regulated activities as long as the average nonregulated usage of the cost category does not decline.

17. Bell Atlantic objects to PSCDC's proposal on several grounds.[29] First, it argues that adopting the PSCDC's proposed level of detail would increase enormously the amount of information the Commission would have to examine. Second, rates are set and jurisdictional separations studies are performed on a statewide basis, not by switch or by cable run. Thus, only changes in the allocation of investment between regulated and nonregulated usage that affect the statewide investment allocations should be of concern to regulators. Third, the cost of many facilities associated with switching entities and cable runs will in fact be assigned to nonregulated activities on the basis of tariffed rates. BellSouth urges the rejection of PSCDC's proposal on the grounds that the *Joint Cost Order* does not require carriers to assign investment by specific type of plant *(i.e.,* switch, wire center or cable run).[30] NYNEX, PacTel and USTA object to the PSCDC proposal for all the above reasons.[31] PacTel also argues that PSCDC's proposal goes to the heart of the cost allocation process and that consideration of such a proposal must be done in the context of a Rule Making.

18. In the *Joint Cost Order* the Commission considered at length the issue of how fine a disaggregation of costs was necessary to achieve an acceptably accurate division of costs between regulated and nonregulated activities.[32] While it concluded that the number of categories (pools) was critical to the potential for success, it noted that, even for a carrier extensively involved in nonregulated activities, " . . . thousands of categories could become costly to implement and impossible to monitor".[33] Furthermore, if disaggregation is too fine, every change in nonregulated operations would require recasting category boundaries and redefining the allocation factors.[34] We are skeptical that the extremely minute categorization of investment proposed by PSCDC is workable and productive of a more accurate allocation. Furthermore, we agree that adoption of PSCDC's proposal would require substantially more notice and comment than can be provided or is even appropriate in this Order.

19. *Reporting for Directly Assigned Cost Pools.* USTA, in its comments, objects to the requirement in Table III and Table VI that dedicated investment be reported on a pool-by-pool level of detail.[35] It asserts that the purpose of Table III is to show the connection between the data provided in Table II and the data that underlies the cost support that the carriers submit as part of their access tariff filings. It argues that the Commission does not review tariff cost support data at the cost pool level of detail and that the carriers do not prepare budgets on that level of detail. USTA states that requiring carriers to report dedicated investment by pool would force carriers to produce information far in excess of that required by any other Commission order; it would, by forcing carriers to anticipate dedicated investment costs, intrude on carriers' legitimate business prerogatives; and, it would serve no regulatory purpose. USTA proposes that Table III should require dedicated investment to be aggregated at the level of detail of the access tariff cost support, *i.e.,* an aggregation of accounts. USTA states that the purpose of Table VI is to provide the detail underlying Appendix C of the *ARMIS Order,* and that Appendix C requires reporting on an account level, not a cost pool level of detail. Furthermore, it asserts that many of the dedicated investment pools have no regulatory purpose and were established for administrative reasons, or to facilitate data processing. For these reasons, it concludes that there is no regulatory purpose served by the Commission's monitoring of dedicated investment on a pool-by-pool basis. It, therefore, proposes that Table VI should require dedicated investment to be aggregated at the account level.

20. USTA's characterization that Tables III and VI are intended merely to verify other reports incorrectly minimizes the Commission's need for and use of the data contained in these tables. The Commission, in its *Joint Cost Order,* clearly expressed its concern that all costs, both dedicated and allocated, are accurately assigned to the regulated and nonregulated functions they support. The *Public Notice* reports, in conjunction with the other *ARMIS Order* reports, are intended to provide an unbroken audit trail that will allow us to assess the credibility of a carrier's allocations and direct assignments and to evaluate the adequacy of its accounting controls.

21. USTA is also incorrect in asserting that the Commission's regulatory needs would be fully served by reporting dedicated investment assignments at the account, or higher, level of aggregation. As we noted in paragraph 18, above, the Commission requires costs to be grouped and allocated by cost pools. We do not believe that reporting investment data at the account, or higher, level of aggregation is responsive to the Commission's need to monitor these cost pool assignments and allocations.

22. We find USTA's arguments that the carriers need not report cost data for every cost pool to be unpersuasive. USTA argues that certain of the direct assignment cost pools were created for administrative convenience and that reporting costs data for these pools would serve no regulatory purpose. This is clearly not the case. In the *Joint Cost Order* the Commission directed the carriers to develop logical, homogeneous, statewide cost pools and to tailor the number of pools to the scope and nature of the nonregulated activities the carriers intend to undertake. Furthermore, to ensure that the carriers do not set up superfluous cost pools, in our Cost Allocation Manual orders[36] we directed the carriers to delete all cost pools that were not expected to be used to allocate costs in the foreseeable future.[37] Given this direction, we see no reason why a carrier would establish a cost pool with no regulatory purpose. If some carriers have done so they should

file amendments to their cost manuals eliminating such unnecessary pools. Furthermore, contrary to USTA's assertions, it is essential that carriers report cost data for the directly assigned pools. In the *Joint Cost* proceeding, both the carriers and the Commission agreed that the majority of all costs are expected to be directly assigned, either to regulated or nonregulated activities.[38] To ignore such costs in the reporting process would make it impossible to perform the comprehensive review of the joint cost allocation process needed to assure the public that a carrier's nonregulated activities are not being improperly supported by its regulated activities. We likewise find unconvincing USTA's argument that some carriers may not budget at the cost pool level (*i.e.,* for all cost pools). We believe the joint cost allocation process is important enough to warrant consideration in a carrier's budgeting processes. Until it is worked into the budgeting processes, however, we believe allocation techniques can be developed which will enable a carrier to achieve acceptable levels of accuracy in its reporting of cost pool cost data. For these reasons we are rejecting USTA's proposals for Table III and Table VI and reaffirm our requirement that dedicated investment be reported by cost pool.

B. ***Technical and Editorial Changes***

23. Commenting parties made the following suggestions which would, if adopted, make only cosmetic changes to the reports. We consider them on a table-by-table basis. Unless otherwise noted, all the following were taken from USTA's Comments.[39]

24. *Table I.* USTA states that the instructions for Table I, columns (c), (e), (f), and (g) make reference to "investment use forecast," and suggests substituting "units of use" to make it clear that the reference is to units of use and not to investment dollars. USTA also states that the instructions for Table I, column (i), titled "Highest Nonregulated Ratio," should refer to column (h) instead of column (g). We agree and have amended Table I in the Attachment to make these changes.

25. *Table II.* USTA suggests that this table's title, "Gross Investment Allocation Schedule," be changed to "Forecasted Investment Allocation Schedule," to reflect the fact that it is used to report forecast data. In addition, the column heading for column (d) makes the reference "From TRP." Since Table II will not contain data from all cost pools,[40] the numbers will not match the more aggregated numbers that appear in the Tariff Review Plan (TRP). Moreover, since the instructions make it clear that the amount reported in column (d) are the same amounts *underlying* the TRP, the column head reference is misleading and unnecessary. We agree with both suggestions and have modified Table II accordingly.

26. *Table III.* USTA notes that this table has the same title as Table VI: "Gross Investment Summary Schedule." It suggests that it would be more accurate and less confusing if Table III were titled "Forecasted Investment Summary Schedule," and Table VI were titled "Actual Investment Summary Schedule." We agree with USTA and adopt the proposed titles.

27. *Table IV.* USTA is concerned that the general instructions for Tables IV through VI do not include provisions for proprietary treatment as do the general instructions for Tables I through III and the other *ARMIS Order* reports. We agree with USTA. The omission was an oversight. A more detailed provision for proprietary treatment has been included in the Reporting Procedures section of the Instructions for both sets of tables.

28. USTA recommends changing the title of the Table IV "Actual Usage of Investment Dollars Schedule" to "Actual Apportionment of Investment Dollars" to avoid confusing the dollars reported in this table with the units of use being reported in Table V. We agree with USTA and adopt the proposed title.

29. USTA suggests dropping column (c) and moving column (g) into its place. We agree with USTA that column (c), which contains unit data, does not belong on this table which otherwise contains monetary data. We disagree, however, that column (g), the nonregulated allocation ratio, should be moved. That column appears after the total investment and nonregulated investment columns because it is derived from those parameters.

30. USTA recommends that Column (h), titled "Ratio of Regulated Use," be deleted because it contains no information that can not be derived from other columns in Table IV, and is not referenced by other tables. While we agree with USTA that column (h) can be derived from the remaining columns in Table IV, we disagree that it should be deleted. We believe that displaying the ratios of nonregulated and regulated use side by side contributes to the usefulness of the table. In general, *ARMIS Order* reports are intended to supply the maximum amount of useful information that is possible without unduly increasing the burden on the reporting carriers. We do not believe that the calculation and display of column (h) is burdensome and we therefore reject the proposal to delete it.

31. *Table V.* USTA recommends that column (e), titled "Units of Nonregulated Use," and column (f), titled "Units of Regulated Use," be switched. It argues that regulated use should appear before nonregulated use, so that Table V matches the format of Table I. We disagree with USTA. Table V's placement of nonregulated before regulated follows the placement used in Table IV and Table VI. Tables IV and VI use total investment, minus nonregulated investment to calculate regulated investment. Therefore, nonregulated investment logically comes before the regulated investment. Although Table V is in units of use, as is Table I, we believe that it would be less confusing if Table V follows the logical layout of Tables IV and VI because Tables IV, V, and VI are all filed as one report and Table I is filed as part of another report.

32. USTA argues that column (h), titled "Ratio of Regulated Use," should be deleted for the same reasons given above for deleting column (h) of Table IV. We disagree with USTA and note again that we are of the belief that displaying the ratios of nonregulated and regulated use side by side contributes to the usefulness of the table while not placing an undue burden on the carriers. As a result, we reject USTA's proposal.

33. *Table VI.* USTA recommends the addition of subtotals to present the data at the TRP level of aggregation in addition to the account level of detail. We agree with USTA that this is a useful addition and adopt it as a requirement.

C. ***Procedural Issues***

34. USTA comments that the subject forms "have not been developed under any Rule Making" and states that:

> USTA is concerned that these reports may not be lawfully imposed on carriers who are not fully subject carriers or who are not subject to the Commission's Part 32 rules or cost allocation requirements.

USTA asserts that the reporting of cost pools by other than fully subject carriers is inconsistent with the Communications Act, because the Act only prescribes a system of accounts for fully subject carriers, not the development and disclosure of cost pools by all carriers. Thus, it requests that we require the reports only from fully subject carriers who must file cost allocation manuals and have their own interstate tariffs.[41]

35. USTA's "concerns" are not properly raised in this proceeding. If USTA or its members have any uncertainty about the Commission's jurisdiction to require carriers to file reports, they may file a petition for Rule Making or declaratory relief so that all concerned parties may address that issue. In the *ARMIS Order*, the Commission adopted reporting requirements applicable to all telephone companies with operating revenues in excess of 100 million,[42] and the Bureau is now simply following its mandate to adopt forms and reporting formats to carry out those requirements.[43] The *Joint Cost Order* rules are applicable to all local exchange carriers other than average schedule companies, and those rules require these carriers to group common costs into homogeneous cost categories (or cost pools) for allocation between regulated and nonregulated activities.[44]

D. *Format and Media Specifications.*

36. The *Public Notice* did not contain the format and media specifications the carriers will need to file the reports. The *ARMIS Order* delegated the authority to determine and revise format and media for the reporting requirements to the Chief of the Common Carrier Bureau.[45] The Bureau's staff has held extensive discussions with the carriers concerning the format and media for the *ARMIS Order* reports and believes that no further discussion is required before specifications are adopted for the *Public Notice* reports. We believe the specifications that we have developed are fully responsive to the needs of the Bureau and the industry. We are, therefore, adopting the specifications for format and media as detailed in the Attachment to this Order.

E. *Extension of Forecast Report Filing Date.*

37. Due to the shortness of time until the first filing of the Forecast Report is due, we are postponing the filing date from June 1 to June 30, 1988. We believe that this extension will allow the carriers sufficient time to revise their submissions in response to the modest changes in the Forecast Report adopted in this Order.

IV. PAPERWORK REDUCTION ACT

38. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

V. ORDERING CLAUSE

39. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. Sections 154(i), 154(j), 201-205, 215, 218, 219, and 220, that the forms attached hereto ARE ADOPTED, and that the modifications requested in the comments herein ARE DENIED, except as provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Vaughan
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] Common Carrier Bureau Proposes Automated Report to Support Joint Cost Allocations, DA 88-225, released February 24, 1988 (*Public Notice*). Comments were due 30 days after the release date; reply comments were due 45 days after the release date.

[2] Comments were filed by BellSouth Corporation (BellSouth), the Public Service Commission of the District of Columbia (PSCDC), MCI Communications Corporation (MCI), Pacific Telesis (PacTel), and the United States Telephone Association (USTA). Replies were filed by the Bell Atlantic Telephone Companies (Bell Atlantic), BellSouth, the NYNEX Telephone Companies (NYNEX), PacTel, and USTA.

[3] Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, *Report and Order*, CC Docket 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *modified on recon.*, 2 FCC Rcd 6283 (1987) (*Joint Cost Reconsideration Order*), *petitions for further recon. pending.*

[4] The *Joint Cost Reconsideration Order* requires that investments in central office equipment and cable and wire facilities jointly used to provide regulated and nonregulated services be allocated on the basis of a three-year forecast of regulated and nonregulated usage.

[5] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987)(*ARMIS Order*), *petitions for recon. pending.*

[6] *Id.* at 5776, para. 54.

[7] We adopt the language of the majority of the carriers' cost allocation manuals and use the term cost pool to refer to the "logical, homogeneous, statewide," cost categories required in the *Joint Cost Order*. *See Joint Cost Order*, 2 FCC Rcd at 1319.

[8] Not all central office and cable investment is subject to shared regulated and nonregulated usage. If the investment is dedicated either to regulated or nonregulated usage, the investment is directly assigned to dedicated cost pools. Dedicated investment is only reported in Tables III and VI, which display the total usage of the central office and cable investment accounts.

[9] The instructions for Table I, column (i) and Table II, column (g) read in part: "Exception: when a waiver for declining demand has been granted . . . ."

[10] USTA Comments at 3; BellSouth Comments at 1; PacTel Comments at 3.

[11] The grant of such a waiver is conditional on a showing that the regulated operation has need of additional capacity and that the regulated operation cannot obtain that additional capacity at a lower cost from any other source. *Joint Cost Order*, 2 FCC Rcd at 1320.

[12] In this circumstance the nonregulated investment attribution factor is frozen at the level that applied during the period in which the total demand peaked. *Id.*

[13] USTA Comments at 4; BellSouth Comments at 2; PacTel Comments at 3.

[14] PSCDC Comments at 2.

[15] MCI Comments at 3.

[16] USTA Comments at 10.

[17] Bell Atlantic Reply at 2.

[18] BellSouth Reply at 4.

[19] NYNEX Reply at 3-4.

[20] PacTel Reply at 5.

[21] USTA Reply at 2.

[22] Bell Atlantic Reply at 4.

[23] BellSouth offered the following example of why the simple comparison of the absolute amounts forecasted with the amounts actually allocated does not necessarily yield a meaningful result: " . . . [A]ssume total network investment is1,000,000 and the highest nonegulated use of network investment is 20%. Further, assume actual investment is900,000 and actual nonregulated use of network investment is 10%. In this situation, the amount of forecasted nonregulated absolute dollars is200,000 (1,000,000 x 20%); however, the actual nonregulated dollars assigned is180,000 (900,000 x 20%)" . . . .[Thus, the actual allocation was20,000 below the forecast.] "If this difference of 20,000 is divided by200,000, *i.e.*, forecasted investment, the result is 10%. However, such a result proves nothing other than the fact that20,000 divided by200,000 is 10%. It is certainly not germane to the objective of determining whether the carrier has misforecasted the regulated/nonregulated use. In fact, in this example, the carrier fully complied with the Commission's rules, *i.e.*, it assigned actual investment based on the highest forecasted nonregulated use." BellSouth Reply at 4.

[24] NYNEX Reply at 3.

[25] PacTel Reply at 5.

[26] USTA Reply at 2.

[27] USTA's proposal, for example, is intended to facilitate the comparison of forecasted and actual nonregulated usage. The one column comparison, however, ignores the fact that multiple comparisons between forecast and actual results have to be made. For example, to determine that actual use has not exceeded the three year forecast that was the basis of the forecast allocation in 1990, the forecast has to be compared to the actual nonregulated usage reported for 1990, 1991 and 1992. Furthermore, the carriers will ultimately have made three forecasts that cover the year 1990. (The first forecast was made in 1987 and covered the years 1988, 1989 and 1990. The last forecast was made in 1989 and covered 1990, 1991 and 1992.) Thus, the actual nonregulated usage for 1990 will have to be compared with the forecasts made in 1987, 1988 and 1989 for the year 1990.

[28] PSCDC Comments at 3.

[29] Bell Atlantic Reply at 3.

[30] BellSouth Reply at 3.

[31] NYNEX Reply at 4; PacTel Reply at 2; USTA Reply at 4.

[32] *Joint Cost Order*, 2 FCC Rcd at 1319.

[33] *Id.* at 1319.

[34] *Id.*

[35] USTA Comments at 8, 10.

[36] NYNEX Telephone Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, 3 FCC Rcd at 81, 82; BellSouth Corporation's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, 3 FCC Rcd at 128; U S West's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, 3 FCC Rcd at 195, 196; Ameritech Operating Companies' Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum Opinion and Order*, 3 FCC Rcd at 433, 434; Southwestern Bell Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, *Memorandum* Opinion and Order, 3 FCC Rcd at 447.

[37] *See, e.g.*, Southwestern Bell Telephone Company's Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, Memorandum Opinion and Order, 3 FCC Rcd 447, 452 (1987).

[38] *See, e.g.*, Joint Cost Order, 2 FCC Rcd at 1314.

[39] The following pleadings supported USTA's Comments: Bell Atlantic Reply at 1; BellSouth Comments at 1; BellSouth Reply at 1; NYNEX Reply at 2; PacTel Comments at 1.

[40] Only data from cost pools which support both regulated and nonregulated activities are shown on this table.

[41] USTA Comments at 2, note 5.

[42] *See* 47 C.F.R. §43.21.

[43] ARMIS Order, 2 FCC Rcd at 5770.

[44] *See* 47 C.F.R. §64.901(b)(3).

[45] ARMIS Order, 2 FCC Rcd at 5772.

This document provides the instructions for FCC Report 495A, the Forecast of Investment Usage Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed Automated Data Processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 495A, the Forecast of Investment Usage Report, to the Commission.

B. General Information

1. FCC Report 495A was adopted pursuant to the Commission Order in the proceeding Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). It is prescribed for every communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations.

2. The carrier shall file the initial report by June 30, 1988, and this report will be for the calendar year 1988. The carrier shall make subsequent filings on an annual basis at the same time as its annual access tariff filing, beginning with a report in 1988 to be submitted at the same time as the 1989 access tariff filing.

3. The report shall be filed on a study area (jurisdiction), a consolidated access tariff area, and an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 495A, which identifies the filing as the Forecast of Investment Usage Report. The period identifies the year covered by the report. (Although Table I will contain data for three forecast years, the period for the report is the initial forecast year.) See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their

respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. Data Items That Are "Not Available" or Are "Withheld"

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required reports, a carrier submits a report which combines data for more than one study area and which includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.4 in the attached Automated Report Specifications and paragraph C in the attached Paper Report Specifications for data entry conventions for these items.

D. Where to File

1. Carriers submitting FCC Report 495A should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the

attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. Footnotes

1. In addition to any optional footnote text which the carrier may wish to include in its report, the instructions for Tables I and II identify certain situations which require footnotes.

2. Any footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 495A. Submissions containing corrected data must contain references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 495A by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 11 of the attached Report Definition.

H. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 495A, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 495A may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 495A may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

SUMMARY

This document contains the Report Definition for FCC Report 495A, the Forecast of Investment Usage Report. The following three tables and associated instructions implement the requirement that certain telephone plant investment used for both regulated and nonregulated purposes be assigned to cost categories and allocated on the basis of forecasted regulated and nonregulated use. This report provides the forecasts and resulting investment allocations incorporated in a carrier's cost support for its access tariffs.

FCC REPORT 495A - FORECAST OF INVESTMENT USAGE REPORT

GENERAL INSTRUCTIONS

Except where noted, all dollar amounts in this filing are access tariff year amounts and must be consistent with the dollar amounts forecasted in the cost support data filed with the Tariff Review Plan. Dollar amounts shall be reported in thousands.

Each reported line item will be taken from the carrier's cost categories designated in its Part 32 Cost Allocation Manual, as amended and approved under our Part 64 Rules.

REFERENCES

Cost Categories:

For the names and descriptions of the cost categories applicable to each filing carrier, see the individual carriers' permanent Part 32 Cost Allocation Manuals for the separation of regulated and nonregulated costs.

Central Office Equipment and Cable and Wire Facilities:

Central Office Equipment includes all equipment recorded in accounts listed under "TPIS--Central Office assets" in Part 32.2000 (j). Central Office Equipment - Switching includes all equipment recorded in accounts listed under "TPIS--Central Office assets: Central Office--Switching" in Part 32.2000 (j). Central Office Equipment - Transmission includes all equipment recorded in accounts listed under "TPIS--Central Office assets: Central Office--Transmission" in Part 32.2000 (j). Cable and wire facilities include all cable and wire facilities recorded in accounts listed under "TPIS--Cable and wire facilities assets" in Part 32.2000 (j).

Cost Categories Requiring Forward-Looking Allocator:

Each carrier's Part 32 Cost Allocation Manual identifies all the cost categories that, under Part 64 of the Commission's Rules, must be allocated on the basis of a three year forecast of use (forward looking allocator).

TABLE I - FORECAST USAGE SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY COST CATEGORY

Report only those cost categories identified in the carrier's approved Part 32 Cost Allocation Manual that require allocation on the basis of a forward looking allocator. For each cost category enter the forecast for each of the three calendar years following the filing date on which this report is filed. For example, in the report to be filed in 1988 at the same time as the 1989 access tariff filing, the forecast years will be 1989, 1990 and 1991. Exception: in the report to be filed in June 1988, the forecast years will be 1988, 1989 and 1990.

Row Number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - In the row for the first forecast year for each cost category, enter the account number, e.g., 2211. In the rows for the second and third forecast years for each cost category, leave this column blank.

Column (b) - Enter the cost category as follows:

Assign a unique alpha/numeric code (up to six characters, with no embedded blanks) to each cost category within an account. Use this same code throughout all Tables of this report and in future Reports 495A and 495B, when filed.

In the row for the first forecast year for each cost category, enter this assigned code, followed by one or more spaces, followed by the descriptive name for the cost category (up to twenty characters, with embedded blanks allowed). In the rows for the second and third forecast years for each cost category, leave this column blank.

For example, for the first forecast year for a central office equipment cost category, this column could contain the following:

NetEq Network Equipment
| |
(code) (descriptive name)

Enter "NONE" on the first row of the table if there are no cost categories that require allocation on the basis of a forward looking allocator.

Column (c) - Enter the measure used by the carrier to arrive at a quantified unit of use for each cost category, e.g., thousands of minutes of use, messages, lines, etc. Use up to eighteen characters, with embedded blanks allowed.

Column (d) - Enter the forecast calendar year, e.g., 1988, 1989 and 1990. Use three lines--one for each forecast year.

Column (e) - For each forecast year, enter the total number of units of use for all regulated and nonregulated activities. For example, total thousands of minutes of use for both regulated and nonregulated services.

Column (f) - For each forecast year, enter the number of units of use for regulated activities.

Column (g) - For each forecast year, enter the number of units of use for nonregulated activities.

Column (h) - For each forecast year, enter the result of column (g) divided by column (e) as a ratio rounded to four decimal places. The result represents the relative use of investment for nonregulated activities.

Column (i) - For each cost category, enter the highest of the column (h) figures for the three forecast years. Enter this value as a ratio rounded to four decimal places in the row for the third forecast year; in the rows for the first and second forecast years, leave this column blank. Exception: When total demand has begun to decline and is expected to continue to decline until exhausted, the peak ratio (calculated as column (g) divided by column (d) on Table II) is frozen at its highest previous level. A footnote is required to identify the year and the Table II filing date from which the peak ratio is derived.

TABLE II - FORECASTED INVESTMENT ALLOCATION SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY COST CATEGORY

Report information by cost category as designated on Table I. Use one row for each category and enter in the same order as on Table I, using the same cost category code.

Row Number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - Enter column (a) from Table I.

Column (b) - Enter column (b) from Table I. Enter "NONE on the first row of the table if there are no cost categories that require allocation on the basis of a forward looking allocator.

Column (c) - Enter the ratio from Table I, column (i).

Column (d) - Enter the forecasted average gross investment for the total filing entity for the prospective access tariff year.

Column (e) - Enter column (c) times column (d). This result represents the amount of gross investment dollars forecasted for nonregulated activities, based on the current investment forecast.

Column (f) - Enter the amount listed in Report 495B, Actual Usage of Investment Report, Table IV, column (d) in the most recent filing of the Actual Apportionment of Investment Dollars Schedule. (Enter zero here for the June 1988 filing and for the report to be submitted in 1988 at the same time as the 1989 access tariff filing.)

Column (g) - Enter the higher of column (e) or column (f). Exceptions: (1) If total demand has begun to decline and is expected to continue to decline until exhausted, enter column (e); (2) if a waiver to transfer nonregulated investment to regulated activities has been granted, enter column (e) or (f) as appropriate, minus the amount of transferred investment. A footnote is required if a waiver has been granted. The footnote should identify the date and amount of the investment transferred and the date the waiver was granted. This represents the gross nonregulated amount that is to be removed under Part 64 of our rules for the prospective access tariff year.

TABLE III - FORECASTED INVESTMENT SUMMARY SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY ACCOUNT AND COST CATEGORY

Report each central office equipment and cable and wire facilities cost category identified in the carrier's approved Part 32 Cost Allocation Manual. In columns (c), (d), and (e), provide subtotals by account for accounts with more than one cost category, provide separate subtotals for Central Office Equipment - Switching, Central Office Equipment - Transmission, Central Office Equipment, and Cable and Wire Facilities, and provide a grand total as the last row of the table.

Row Number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - Enter an account number for each central office equipment and cable and wire facilities account. Leave this column blank in the rows containing the subtotals for COE - Switching, COE - Transmission, Central Office Equipment, Cable and Wire Facilities, and the grand total row.

Column (b) - Enter a cost category for each central office equipment and cable and wire facilities cost category as follows:

The column will consist of the category's alpha/numeric code (up to six characters, with no embedded blanks), followed by one or more spaces, followed by the descriptive name for the cost category (up to twenty characters, with embedded blanks allowed). The code and name will be taken from Table I Column (b) for those cost categories that are subject to a forward looking allocator. If no code has been assigned, assign a unique code and use the same code in future Reports 495A and 495B, when filed. Use the following codes for the subtotal rows and the grand total row:

Row	Code
account subtotals	SUBTOT
COE - Switching	COE-SW
COE - Transmission	COE-TR
Central Office Equipment	COE
Cable and Wire Facilities	CWF
grand total	TOTAL

Column (c) - Enter the total forecasted gross investment dollars for all operations, both regulated and nonregulated, for each cost category. This amount shall be taken from Table II, column (d) for those cost categories that are subject to a forward looking allocator. The total of the cost categories in each account should correspond with the total filing entity's cost support data for that account filed with the access tariffs.

Column (d) - Enter the amount of gross investment allocated to nonregulated activities, for each cost category. This amount shall be taken from Table II, column (g) for those categories that are subject to a forward looking allocator.

Column (e) - Enter column (c) less column (d). The resulting amount is that amount allocated to regulated activities and must be consistent with the access tariff cost support data.

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - FORECAST USAGE SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Account (a)	Cost Category (b)	Allocator Unit of Use (c)	Year (d)	Total Use (e)	Regulated Use (f)	Nonregulated Use (g)	Nonreg Ratio (h)=(g)/(e)	Highest Nonreg Ratio (i)

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE II

TABLE II - FORECASTED INVESTMENT ALLOCATION SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Account (a)	Cost Category (b)	Nonregulated Forecast Ratio (From Table I, col. (i)) (c)	Projected Gross Investment $ (000) (d)	Nonregulated Allocation Based on Forecast $ (000) (e)=(c)*(d)	Highest Previous Allocation to Nonreg $ (000) (f)	Nonregulated Allocation $ (000) (g)

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE III

TABLE III - FORECASTED INVESTMENT SUMMARY SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Account and Cost Category

Row	Account	Cost Category	Total Investment $ (000)	Nonregulated Investment $ (000)	Regulated Investment $ (000)
	(a)	(b)	(c)	(d)	(e)=(c)-(d)

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the forecasts and/or actual data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed Automated Data Processing (ADP) specifications for the automated report to be filed as FCC Report 495A, the Forecast of Investment Usage Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "JF".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Confidential Version of the initial joint cost forecast report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88JF.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
JF	Joint cost forecast data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe_____".

2. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

3. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for ratio data fields, which will include a decimal point but not a percent sign.

4. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in a ratio field, -99999 would be entered as -99999.0000

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All ratio fields must be rounded to 4 decimal places.
   Example: 0.12345678 should be entered as 0.1235

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 20 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by one or more Type U1 records, followed by one or more Type I1 records, followed by twenty or more Type S1 records, followed by one or more Type C1 records, followed by zero or more Type F1 records, followed by zero or more Type E1 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type U1	Forecast Usage Data Record	One or more Type U1 records per file. One record for each of the 3 rows for each of the cost categories designated for Table I, as identified on Pages 3, 4 & 8 of the accompanying Report Definition. Each record contains forecast unit of use data values for a particular cost category and forecast year. -OR- One Type U1 record to verify that there are no applicable cost categories. See pages 7, 8 & 9 for record layout.
Record Type I1	Forecasted Investment Allocation Data Record	One or more Type I1 records per file. One record for each row, one row for each cost category designated for Table II, as identified on Pages 5 & 9 of the accompanying Report Definition. Each record contains forecasted investment dollars and their allocation. -OR- One Type I1 record to verify that there are no applicable cost categories. See pages 10 & 11 for record layout.

Record Type S1	Forecasted Investment Summary Data Record	Twenty or more Type S1 records per file. One record for each row, one row for each cost category, subtotal, and grand total designated for Table III, as identified on Pages 6, 7 & 10 of the accompanying Report Definition. Each record contains forecasted investment dollars. See pages 12 & 13 for record layout.
Record Type C1	Confidential Treatment Record	One or more Type C1 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 14 & 15 for record layout.
Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See pages 16 & 17 for record layout.
Record Type E1	Erratum Record	Zero Type E1 records in the first submission of a year's data. One or more Type E1 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 18 & 19 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 20 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (CO = company, SA = study area, see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized. and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88JF.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19880515	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5          . . . . .   Ruler line
12345678901234567890123456789012345678901234567890123456789          . . . . .   Ruler line
Sample record:
1001,"LBIL","H1","LBIL88JF.C01",1988,0,19880515,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 495A "	18-35	Always contains "FCC REPORT 495A " capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9         0         1         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1002,"LBIL","L1","FCC REPORT 495A ","Illinois Bell                ","Illinois          ","Jan 1988 to Dec 1988","XQ"
```

RECORD TYPE U1 - FORECASTED USAGE DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"U1"	13-16	Always contains the letter U capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 3 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 3 of the accompanying Report Description. Format: right justified and space filled. Note: Repeat this value in all three rows for each cost category, even though the paper report will be blank in the second and third rows.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 3 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks. Note: See note at Field 5 above.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 3 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks. Note: See note at Field 5 above.
8	Allocator unit of use from column (c)	"Weighted Terms "	60-79	This field contains the allocator unit of use as described on Page 3 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks. Note: See note at Field 5 above.

RECORD TYPE U1 - FORECASTED USAGE DATA RECORD (continued)

Field	Item	Example	Position	Description
9	Forecast year from column (d)	1988	81-84	This field contains the forecast year as described on Page 4 of the accompanying Report Definition. Format: right justified and space filled.
10	Column (e) data	100000	86-94	This field contains the data corresponding to column (e) as shown on Page 4 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
11	Column (f) data	80000	96-104	Column (f) data Format: see Field 10 above.
12	Column (g) data	20000	106-114	Column (g) data Format: see Field 10 above.
13	Column (h) data	0.2000	116-126	This field contains the data corresponding to column (h) as shown on Page 4 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999.0000 to indicate that the data is not available. Enter -88888.0000 on the "public version" diskette to indicate that confidential treatment has been requested.
14	Column (i) data	-99999.0000	128-138	Column (i) data Format: see Field 13 above.
15	End of Record Code	"XQ"	140-143	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

RECORD TYPE U1 - FORECASTED USAGE DATA RECORD (continued)

Note When total demand has begun to decline and is expected to continue to decline until exhausted, the peak ratio (calculated as column (g) divided by column (d) on Table II) is frozen at its highest previous level. A footnote is required to identify the year and the Table II filing date from which the peak ratio is derived.
Add one or more Type F1 records (after the remaining Type U1, I1, S1 and C1 records) containing footnote text as required.

If there are no cost categories applicable to Table I, then include only one Type U1 record. Enter the number 0 in fields 5 and 9, "NONE " in field 6, and -99999 in fields 10 thru 14.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample records:
1003,"LBIL","U1",   1,2212,"NetEq ","Network Equipment   ","Weighted Terms    ",1988,   100000,
1004,"LBIL","U1",   2,2212,"NetEq ","Network Equipment   ","Weighted Terms    ",1989,   200000,
1005,"LBIL","U1",   3,2212,"NetEq ","Network Equipment   ","Weighted Terms    ",1990,   300000,
                                    -OR-
1003,"LBIL","U1",   1,   0,"NONE  ","                    ","                  ",   0,   -99999,
```

```
    1         1         1         1         1
9   0         1         2         3         4
67890123456789012345678901234567890123456789012345678901234567890123
Continuation of sample records:
    80000,    20000,     0.2000,-99999.0000,"XQ"
   140000,    60000,     0.3000,-99999.0000,"XQ"
   180000,   120000,     0.4000,    0.4000,"XQ"
                      -OR-
   -99999,   -99999,-99999.0000,-99999.0000,"XQ"
```

RECORD TYPE I1 - FORECASTED INVESTMENT ALLOCATION DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1093	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"I1"	13-16	Always contains the letter I capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 5 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 5 of the accompanying Report Description. Format: right justified and space filled.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 5 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks. Note: See note at Field 5 above.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 5 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
8	Column (c) data	0.4000	60-70	This field contains the data corresponding to column (c) as shown on Page 5 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999.0000 to indicate that the data is not available. Enter -88888.0000 on the "public version" diskette to indicate that confidential treatment has been requested.

RECORD TYPE I1 - FORECASTED INVESTMENT ALLOCATION DATA RECORD (continued)

Field	Item	Example	Position	Description
9	Column (d) data	100000	72-80	This field contains the data corresponding to column (d) as shown on Page 5 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
10	Column (e) data	40000	82-90	Column (e) data Format: see Field 9 above.
11	Column (f) data	0	92-100	Column (f) data Format: see Field 9 above.
12	Column (g) data	40000	102-110	Column (g) data Format: see Field 9 above.
13	End of Record Code	"XQ"	112-115	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If a waiver to transfer nonregulated investment to regulated activities has been granted, a footnote is required to identify the date and amount of the investment transferred and the date the waiver was granted. Add one or more Type F1 records (after the remaining Type I1, S1 and C1 records) containing footnote text as required.

If there are no cost categories applicable to Table II, then include only one Type I1 record. Enter the number 0 in field 5, "NONE " in field 6, and -99999 in fields 8 thru 12.

```
                                                                                                                  1         1
        1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample record:
1093,"LBIL","I1",   1,2212,"NetEq ","Network Equipment   ",     0.4000,   100000,    40000,        0,    40000,"XQ"
                                                    -OR-
1004,"LBIL","I1",   1,   0,"NONE  ","                    ",-99999.0000,   -99999,   -99999,   -99999,   -99999,"XQ"
```

RECORD TYPE S1 - FORECASTED INVESTMENT SUMMARY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1109	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"S1"	13-16	Always contains the letter S capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 6 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 6 of the accompanying Report Description. Format: right justified and space filled. Note: Enter 0 in rows where the Report Definition instructs that the paper report column be left blank.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 6 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 6 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.

RECORD TYPE S1 - FORECASTED INVESTMENT SUMMARY DATA RECORD (continued)

Field	Item	Example	Position	Description
8	Column (c) data	100000	60-68	This field contains the data corresponding to column (c) as shown on Page 7 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
9	Column (d) data	40000	70-78	Column (d) data Format: see Field 8 above.
10	Column (e) data	60000	80-88	Column (e) data Format: see Field 8 above.
11	End of Record Code	"XQ"	90-93	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Add one or more Type F1 records (after the remaining Type S1 and C1 records) containing footnote text as required.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample record:
1109,"LBIL","S1",    1,2212,"NetEq ","Network Equipment   ",   100000,    40000,    60000,"XQ"
```

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1175	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C1"	13-16	Always contains the letter C capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 13. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 18. Format: include quotation marks. left justified and space filled.

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"F "	40-43	.....
9	Third Column Label	"K "	45-48	. Fields 8 thru 18 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".
				Note: Fields 14 thru 18 are not used in this record in this data file.
19	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1175,"LBIL","C1",1003,"I   ",   1,"G ","H ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1176,"LBIL","C1",1004,"I   ",   2,"G ","H ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1177,"LBIL","C1",9999,"I   ",9999,"I ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1178,"LBIL","C1",1093,"II  ",   1,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1179	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"G "	35-38	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 102) "	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1179,"LBIL","F1",1003,"I   ",   1,"G ", 1, 1,"Footnote text for footnote 1                        ","XQ"
1180,"LBIL","F1",1003,"I   ",   1,"G ", 1, 2,"continuation text for footnote 1                    ","XQ"
1181,"LBIL","F1",1003,"I   ",   1,"G ", 1, 3,"last line of footnote 1                             ","XQ"
1182,"LBIL","F1",1004,"I   ",   2,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table I row 2 ","XQ"
1183,"LBIL","F1",9999,"I   ",9999,"H ", 3, 1,"Footnote 3 pertains to all rows of Table I column H ","XQ"
1184,"LBIL","F1",1094,"II  ",   2,"C ", 4, 1,"Footnote 4 pertains to Table II row 2 column C      ","XQ"
```

RECORD TYPE E1 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1185	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E1"	13-16	Always contains the letter E capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 13. Format: include quotation marks. left justified and space filled.

RECORD TYPE E1 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"D "	40-43	.....
9	Third Column Label	"F "	45-48	. Fields 8 thru 18 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".
				Note: Fields 14 thru 18 are not used in this record in this data file.
19	Footnote Number	1	95-96	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
20	End of Record Code	"XQ"	98-101	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901
Sample record:
1185,"LBIL","E1",1003,"I   ",   1,"G ","H ",","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
1186,"LBIL","E1",1004,"I   ",   2,"G ","H ",","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
1187,"LBIL","E1",1005,"I   ",   3,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
1188,"LBIL","E1",9999,"H   ",9999,"H ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
1189,"LBIL","E1",1094,"II  ",   2,"C ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1099	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
      1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1099,"LBIL","T1","John Doe                                              ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 495A, the Forecast of Investment Usage Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All ratio fields must be rounded to 4 decimal places.
   Example: 0.12345678 should be entered as 0.1235

E. Page Layouts

The ten page layouts are illustrated on pages 3 through 12. The paper report will consist of the following pages, in order:

Table I Page 1.1	See Page 3
Table I Pages 1.2 through 1.3 (if applicable)	See Pages 4 & 5
Table I Pages 2.1 through 2.3 (if additional pages needed)	See Pages 3 - 5
.	
.	
.	
Table I Pages n.1 through n.3 (if additional pages needed)	See Pages 3 - 5
Table II Page 1.1	See Page 6
Table II Page 1.2 (if applicable)	See Page 7
Table II Pages 2.1 through 2.2 (if additional pages needed)	See Pages 6 & 7
.	
.	
.	
Table II Pages n.1 through n.2 (if additional pages needed)	See Pages 6 & 7
Table III Page 1	See Page 8
Table III Page 2 (if additional pages needed)	See Page 8
.	
.	
.	
Table III Page n (if additional pages needed)	See Page 8
The Confidential Treatment Table (at least one page and as many pages as needed)	See Page 9
The Footnote Table (at least one page and as many pages as needed)	See Page 10
The Erratum Table (for submission number 2 or higher, as many pages as needed)	See Page 11
The Certification page	See Page 12

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE x.1 of x

TABLE I - FORECAST USAGE SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Allocator Unit of Use (c)	Year (d)	Total Use (e)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxx	1234	123,456,789	..Ruler Line

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE x.2 of x

TABLE I - FORECAST USAGE SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Year (d)	Reg Use (f)	Nonreg Use (g)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxx	1234	123,456,789	123,456,789	..Ruler Line

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE x.3 of x

TABLE I - FORECAST USAGE SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Year (d)	Nonreg Ratio (h)=(g)/(e)	Highest Nonreg Ratio (i)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	1234	0.1234	0.1234	..Ruler Line

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE II
COSA: xxxx PAGE x.1 of x

TABLE II - FORECASTED INVESTMENT ALLOCATION SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Nonreg Forecast Ratio (From Table I(i)) (c)	Projected Gross Investment$ (000) (d)	Nonreg Allocation Based on Forecast $ (000) (e)=(c)*(d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	0.1234	123,456,789	123,456,789	..Ruler Line

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FORECAST OF INVESTMENT USAGE REPORT

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3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE II
COSA: xxxx PAGE x.2 of x

TABLE II - FORECASTED INVESTMENT ALLOCATION SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Highest Previous Allocation to Nonreg $ (000) (f)	Nonreg Allocation $ (000) (g)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	..Ruler Line

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FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE III
COSA: xxxx Page 1 OF x

TABLE III - FORECASTED INVESTMENT SUMMARY SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Account and Cost Category

Row	Acct (a)	Cost Category (b)	Total Investment$ (000) (c)	Nonreg Investment$ (000) (d)	Regulated Investment$ (000) (e)=(c)-(d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	..Ruler Line

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234	x, x, x, x, x, x, x	. . . Ruler Line

sample entries:

I	1	G, H	
I	2	G, H	
I	ALL	I	
II	1	ALL	

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ..Ruler Line

sample entries:

I	1	G	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	2	ALL	2	Footnote 2 pertains to all columns of Table I row 2
I	ALL	H	3	Footnote 3 pertains to all rows of Table I column H
II	2	C	4	Footnote 4 pertains to Table II row 2 column C

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 495A
FORECAST OF INVESTMENT USAGE REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
ERRATUM TABLE
PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	Footnote	
(a)	(b)	(c)	(d)	
xxxx	1234	x, x, x, x, x, x, x	12	..Ruler Line
sample entries:				
I	1	G, H	1	
I	2	G, H	2	
I	3	ALL		
I	ALL	H	3	
II	2	C	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the forecasts and/or actual data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Nevada	- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Missouri	- Missouri	COMO
	3. Contel of New York	- New York	CONY
	4. Contel of Texas	- Texas	COTX
	5. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1. General Telephone Company of California		- California	GTCA
2. General Telephone Company of Florida		- Florida	GTFL
3. General Telephone Company of the Northwest, Inc.			GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4. General Telephone Company of the South			GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RYNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	4. United Tel. Co. of Ohio	- Ohio	UTOH
	5. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	6. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

This document provides the instructions for FCC Report 495B, the Actual Usage of Investment Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed Automated Data Processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 495B, the Actual Usage of Investment Report, to the Commission.

B. General Information

1. FCC Report 495B was adopted pursuant to the Commission Order in the proceeding Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). It is prescribed for every communications common carrier required by order to file a manual allocating its costs between regulated and nonregulated operations.

2. The carrier shall file by April 1 of each year the report for the previous calendar year. The inital report will be filed by April 1, 1989 and will contain data for the calendar year 1988.

3. The report shall be filed on a study area (jurisdiction), a consolidated access tariff area, and an operating company basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 495B, which identifies the filing as the Actual Usage of Investment Report. The period identifies the year covered by the report. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission

of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required reports, a carrier submits a report which combines data for more than one study area and which includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.4 in the attached Automated Report Specifications and paragraph C in the attached Paper Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 495B should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. In addition to any optional footnote text which the carrier may wish to include in its report, the instructions for Table IV identify certain situations which require footnotes.

2. Any footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 495B. Submissions containing corrected data must contain references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications and the Paper Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 495B by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 11 of the attached Report Definition.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 495B, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. Once filed, the Public or Unrestricted Versions of the paper reports filed as Report 495B may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Once filed, copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 495B may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

SUMMARY

This document contains the Report Definition for FCC Report 495B, the Actual Usage of Investment Report. The following three tables and the associated instructions implement the requirement for reporting the actual investment and usage data for those cost categories that are allocated on the basis of a forward looking investment allocator. The purpose of this report is to enable the Commission's staff to monitor actual and forecasted investment use, as directed in CC Docket 86-111.

FCC REPORT 495B - ACTUAL USAGE OF INVESTMENT REPORT

GENERAL INSTRUCTIONS

Except where noted, dollar amounts will be taken from the accounts and subaccounts (including cost categories as approved in the carrier's Part 32 Cost Allocation Manual) prescribed in Part 32 of the Commission's Rules, and the definitions and instructions contained therein shall also apply to this report wherever applicable. Dollar amounts shall be reported in thousands.

REFERENCES

Cost Categories:

For the names and descriptions of the cost categories applicable to each filing carrier, see the individual carriers' permanent Part 32 Cost Allocation Manuals for the separation of regulated and nonregulated costs.

Central Office Equipment and Cable and Wire Facilities:

Central Office Equipment includes all equipment recorded in accounts listed under "TPIS--Central Office assets" in Part 32.2000 (j). Central Office Equipment - Switching includes all equipment recorded in accounts listed under "TPIS--Central Office assets: Central Office--Switching" in Part 32.2000 (j). Central Office Equipment - Transmission includes all equipment recorded in accounts listed under "TPIS--Central Office assets: Central Office--Transmission" in Part 32.2000 (j). Cable and wire facilities include all cable and wire facilities recorded in accounts listed under "TPIS--Cable and wire facilities assets" in Part 32.2000 (j).

Cost Categories Requiring Forward-Looking Allocator:

Each carrier's Part 32 Cost Allocation Manual identifies all the cost categories that, under Part 64 of the Commission's Rules, must be allocated on the basis of a three year forecast of use (forward looking allocator).

TABLE IV - ACTUAL APPORTIONMENT OF INVESTMENT DOLLARS SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY COST CATEGORY

Report only those cost categories identified in the carrier's approved Part 32 Cost Allocation Manual that require allocation on the basis of a forward looking allocator. A separate row shall be used for each cost category.

Row Number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - Enter the account number, e.g., 2211.

Column (b) - Enter the cost category as follows:

Use the unique alpha/numeric code (up to six characters, with no embedded blanks) previously assigned to the cost category on a previously filed Report 495A. If none has been assigned, assign such a code. Use this same code throughout all Tables of this report and in future Reports 495B and 495A, when filed.

Enter this assigned code, followed by one or more spaces, followed by the descriptive name for the cost category (up to twenty characters, with embedded blanks allowed).

For example, for a central office equipment cost category, this column could contain the following:

NetEq Network Equipment
(code) (descriptive name)

Enter "NONE" on the first row of the table if there are no cost categories that require allocation on the basis of a forward looking allocator.

Column (c) - Enter the actual dollar amount of total gross investment used during the calendar year for both regulated and nonregulated activities.

Column (d) - Enter the actual dollar amount of total gross investment allocated to nonregulated activities during the calendar year. Calculate this amount by multiplying column (c) by Table I, column (i) or enter the amount from Table II, column (f) whichever is greater. If the amount in Table II, column (f) is greater, indicate this in a footnote.

Column (e) - Subtract column (d) from column (c) and enter the result.

Column (f) - Divide column (d) by column (c) and enter the result as a ratio rounded to four decimal places.

Column (g) - Divide column (e) by column (c) and enter the result as a ratio rounded to four decimal places.

TABLE V - ACTUAL USAGE OF INVESTMENT UNITS SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY COST CATEGORY

Report information by cost category as designated on Table IV. Use one row for each cost category and enter in the same order as on Table IV, using the same cost category code.

Row number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - Enter column (a) from Table IV.

Column (b) - Enter column (b) from Table IV. Enter NONE on the first row of the table if there are no cost categories that require allocation on the basis of a forward looking allocator.

Column (c) - Enter the measure used by the carrier to arrive at a dollar amount of investment used for each cost category, e.g., thousands of minutes of use, messages, lines, etc., as designated in the carrier's Part 32 Cost Allocation Manual. Use up to eighteen characters, with embedded blanks allowed.

Column (d) - Enter the actual amount of units of use of total gross investment used during the calendar year for both regulated and nonregulated activities.

Column (e) - Enter the actual amount of units of use of total gross investment used for nonregulated activities during the calendar year.

Column (f) - Enter the actual amount of units of use of total gross investment used for regulated activities during the calendar year.

Column (g) - Enter the ratio, rounded to four decimal places, of units of use of total gross investment used during the calendar year for nonregulated activities. This is derived by dividing column (e) by column (d).

Column (h) - Enter the ratio, rounded to four decimal places, of units of use of total gross investment used during the calendar year for regulated activities. This is derived by dividing column (f) by column (d).

TABLE VI - ACTUAL INVESTMENT SUMMARY SCHEDULE
FOR CENTRAL OFFICE EQUIPMENT AND CABLE AND WIRE FACILITIES
BY ACCOUNT AND COST CATEGORY

Report each central office equipment and cable and wire facilities cost category identified in the carrier's approved Part 32 Cost Allocation Manual. In columns (c), (d), and (e), provide subtotals by account for accounts with more than one cost category, provide separate subtotals for Central Office Equipment - Switching, Central Office Equipment - Transmission, Central Office Equipment, and Cable and Wire Facilities, and provide a grand total as the last row of the table.

Row Number - Assign a unique row number to each row of the table, beginning with 1 and incrementing by one, with no numbers skipped.

Column (a) - Enter an account number for each central office equipment and cable and wire facilities account. Leave this column blank in the rows containing the subtotals for COE - Switching, COE - Transmission, Central Office Equipment, Cable and Wire Facilities, and the grand total row.

Column (b) - Enter a cost category for each central office equipment and cable and wire facilities cost category as follows:

The column will consist of the category's alpha/numeric code (up to six characters, with no embedded blanks), followed by one or more spaces, followed by the descriptive name for the cost category (up to twenty characters, with embedded blanks allowed). The code and name will be taken from Table IV Column (b) for those cost categories that are subject to a forward looking allocator. If no code has been previously assigned, assign a unique code and use the same code in future Reports 495B and 495A, when filed. Use the following codes for the subtotal rows and the grand total row:

Row	Code
account subtotals	SUBTOT
COE - Switching	COE-SW
COE - Transmission	COE-TR
Central Office Equipment	COE
Cable and Wire Facilities	CWF
grand total	TOTAL

Column (c) - Enter the total gross investment dollars for all operations, both regulated and nonregulated, for each cost category. This amount shall be taken from Table IV, column (c) for those cost categories that are subject to a forward looking allocator.

Column (d) - Enter the amount of gross investment allocated to nonregulated activities, for each cost category. This amount shall be taken from Table IV, column (d) for those categories that are subject to a forward looking allocator.

Column (e) - Enter column (c) less column (d). The resulting amount is that amount allocated to regulated activities.

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE IV
COSA: xxxx

TABLE IV - ACTUAL APPORTIONMENT OF INVESTMENT DOLLARS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Account (a)	Cost Category (b)	Total Investment $ (000) (c)	Nonregulated Investment $ (000) (d)	Regulated Investment $ (000) (e)=(c)-(d)	Ratio of Nonregulated Use (f)=(d)/(c)	Ratio of Regulated Use (g)=(e)/(c)

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE V

TABLE V - ACTUAL USAGE OF INVESTMENT UNITS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Account (a)	Cost Category (b)	Allocator Unit of Use (c)	Units of Total Use (d)	Units of Nonregulated Use (e)	Units of Regulated Use (f)	Ratio of Nonreg Use (g)=(e)/(d)	Ratio of Regulated Use (h)=(f)/(d)

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxxx
PERIOD: mmm yyyy to mmm yyyy
COSA: xxxx

xxxxxxxxxxxx VERSION
SUBMISSION x
TABLE VI

TABLE VI - ACTUAL INVESTMENT SUMMARY SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Account and Cost Category

Row	Account	Cost Category	Total Investment $ (000)	Nonregulated Investment $ (000)	Regulated Investment $ (000)
	(a)	(b)	(c)	(d)	(e)=(c)-(d)

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the forecasts and/or actual data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed Automated Data Processing (ADP) specifications for the automated report to be filed as FCC Report 495B, the Actual Usage of Investment Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has six components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letters "JA".
   d. a decimal point.
   e. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   f. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission.

   For example, the file name for the Confidential Version of the initial joint cost actual report data file to be submitted by Illinois Bell to cover the calendar year 1988, would be LBIL88JA.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
JA	Joint cost actual data file
.	decimal point
C	Confidential version
01	First submission of this year's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

2. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

3. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for ratio data fields, which will include a decimal point but not a percent sign.

4. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in a ratio field, -99999 would be entered as -99999.0000

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All ratio fields must be rounded to 4 decimal places.
Example: 0.12345678 should be entered as 0.1235

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 20 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by one or more Type D1 records, followed by one or more Type A1 records, followed by twenty or more Type G1 records, followed by one or more Type C1 records, followed by zero or more Type F1 records, followed by zero or more Type E1 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type D1	Actual Dollar Apportionment Data Record	One or more Type D1 records per file. One record for each row, one row for each cost category designated for Table IV, as identified on Pages 3, 4 & 8 of the accompanying Report Definition. Each record contains the actual investment dollar apportionment data values. -OR- One Type D1 record to verify that there are no applicable cost categories. See pages 7 & 8 for record layout.
Record Type A1	Actual Usage of Units Data Record	One or more Type A1 records per file. One record for each row, one row for each cost category designated for Table V, as identified on Pages 5 & 9 of the accompanying Report Definition. Each record contains the actual unit of use data values. -OR- One Type A1 record to verify that there are no applicable cost categories. See pages 9, 10 & 11 for record layout.

Record Type G1	Actual Gross Investment Summary Data Record	Twenty or more Type G1 records per file. One record for each row, one row for each cost category, subtotal, and grand total designated for Table VI, as identified on Pages 6, 7 & 10 of the accompanying Report Definition. Each record contains actual gross investment dollars. See pages 12 & 13 for record layout.
Record Type C1	Confidential Treatment Record	One or more Type C1 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 14 & 15 for record layout.
Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See pages 16 & 17 for record layout.
Record Type E1	Erratum Record	Zero Type E1 records in the first submission of a year's data. One or more Type E1 records per file in revisions filed to correct that year's submission. Contains information to identify the data which was corrected in this submission. See pages 18 & 19 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 20 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (CO = company, SA = study area, see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88JA.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	0	38	Always contains the number 0 since this is an annual data file.
7	Data Entry Date	19890315	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a year's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that year's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
        1         2         3         4         5          . . . . .   Ruler line
12345678901234567890123456789012345678901234567890123456789 . . . . .   Ruler line
Sample record:
1001,"LBIL","H1","LBIL88JA.C01",1988,0,19890315,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 495B "	18-35	Always contains "FCC REPORT 495B " capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Dec 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                    1         1
         1         2         3         4         5         6         7         8         9         0         1
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample record:
1002,"LBIL","L1","FCC REPORT 495B ","Illinois Bell                ","Illinois                ","Jan 1988 to Dec 1988","XQ"
```

RECORD TYPE D1 - ACTUAL DOLLAR APPORTIONMENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"D1"	13-16	Always contains the letter D capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 3 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 3 of the accompanying Report Description. Format: right justified and space filled.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 3 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 3 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
8	Column (c) data	100000	60-68	This field contains the data corresponding to column (c) as shown on Page 3 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
9	Column (d) data	40000	70-78	Column (d) data Format: see Field 8 above.
10	Column (e) data	60000	80-88	Column (e) data (as shown on Page 4 of the accompanying Report Definition). Format: see Field 8 above.

RECORD TYPE D1 - ACTUAL DOLLAR APPORTIONMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
11	Column (f) data	0.4000	90-100	This field contains the data corresponding to column (f) as shown on Page 4 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999.0000 to indicate that the data is not available. Enter -88888.0000 on the "public version" diskette to indicate that confidential treatment has been requested.
12	Column (g) data	0.6000	102-112	Column (g) data Format: see Field 11 above.
13	End of Record Code	"XQ"	114-117	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Column (d) is either the calculation of column (c) multiplied by Table I column (i), or it is the amount from Table II column (f), whichever is greater. A footnote is required if Table II column (f) is greater. Add one or more Type F1 records (after the remaining Type D1, A1, G1 and C1 records) containing footnote text as required.

If there are no cost categories applicable to Table IV, then include only one Type D1 record. Enter the number 0 in field 5, "NONE " in field 6, and -99999 in fields 8 thru 12.

```
         1         2         3         4         5         6         7         8         9         0         1         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1003,"LBIL","D1",   1,2212,"NetEq ","Network Equipment   ",   100000,    40000,    60000,      0.4000,      0.6000,"XQ"
                                    -OR-                                                      -OR-
1003,"LBIL","D1",   1,   0,"NONE  ","                    ",   -99999,   -99999,   -99999,-99999.0000,-99999.0000,"XQ"
```

RECORD TYPE A1 - ACTUAL USAGE OF UNITS DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1004	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"A1"	13-16	Always contains the letter A capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 5 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 5 of the accompanying Report Description. Format: right justified and space filled.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 5 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 5 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
8	Allocator unit of use from column (c)	"Weighted Terms "	60-79	This field contains the allocator unit of use as described on Page 5 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.

RECORD TYPE A1 - ACTUAL USAGE OF UNITS DATA RECORD (continued)

Field	Item	Example	Position	Description
9	Column (d) data	100000	81-89	This field contains the data corresponding to column (d) as shown on Page 5 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
10	Column (e) data	40000	91-99	Column (e) data Format: see Field 9 above.
11	Column (f) data	60000	101-109	Column (f) data Format: see Field 9 above.
12	Column (g) data	0.4000	111-121	This field contains the data corresponding to column (g) as shown on Page 5 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999.0000 to indicate that the data is not available. Enter -88888.0000 on the "public version" diskette to indicate that confidential treatment has been requested.
13	Column (h) data	0.6000	123-133	Column (h) data Format: see Field 12 above.
14	End of Record Code	"XQ"	135-138	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Add one or more Type F1 records (after the remaining Type A1, G1 and C1 records) containing footnote text as required.

If there are no cost categories applicable to Table V, then include only one Type A1 record. Enter the number 0 in field 5, "NONE " in field 6, and -99999 in fields 9 thru 13.

RECORD TYPE A1 - ACTUAL USAGE OF UNITS DATA RECORD (continued)

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample records:
1093,"LBIL","A1",   1,2212,"NetEq ","Network Equipment . ","Weighted Terms    ",   100000,
                                        -OR-
1004,"LBIL","A1",   1,   0,"NONE  ","                    ","                   ",   -99999,
```

```
         1         1         1         1
9        0         1         2         3
12345678901234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
    40000,    60000,      0.4000,      0.6000,"XQ"
                        -OR-
   -99999,   -99999,-99999.0000,-99999.0000,"XQ"
```

RECORD TYPE G1 - ACTUAL GROSS INVESTMENT SUMMARY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1109	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"G1"	13-16	Always contains the letter G capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	1	18-21	Row number as defined on Page 6 of the accompanying Report Definition. Valid range: 1 to 9999 Format: right justified and space filled.
5	Account number from column (a)	2212	23-26	This field contains the account number from column (a) as described on Page 6 of the accompanying Report Description. Format: right justified and space filled. Note: Enter 0 in rows where the Report Definition instructs that the paper report column be left blank.
6	Cost category code from column (b)	"NetEq "	28-35	This field contains the cost category code from column (b) as described on Page 6 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.
7	Cost category descriptive name from column (b)	"Network Equipment "	37-58	This field contains the cost category descriptive name from column (b) as described on Page 6 of the accompanying Report Definition. Format: left justified and space filled. include quotation marks.

RECORD TYPE G1 - ACTUAL GROSS INVESTMENT SUMMARY DATA RECORD (continued)

Field	Item	Example	Position	Description
8	Column (c) data	100000	60-68	This field contains the data corresponding to column (c) as shown on Page 7 of the accompanying Report Definition. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
9	Column (d) data	40000	70-78	Column (d) data Format: see Field 8 above.
10	Column (e) data	60000	80-88	Column (e) data Format: see Field 8 above.
11	End of Record Code	"XQ"	90-93	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Add one or more Type F1 records (after the remaining Type G1 and C1 records) containing footnote text as required.

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345
Sample record:
1109,"LBIL","G1",   1,2212,"NetEq ","Network Equipment   ",   100000,    40000,    60000,"XQ"
```

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1175	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C1"	13-16	Always contains the letter C capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"IV "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for an entire column, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 12. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 18. Format: include quotation marks. left justified and space filled.

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"F "	40-43	.....
9	Third Column Label	"K "	45-48	. Fields 8 thru 18 are similar
.			.	to Field 7 and are used
.			.	when the request is for
.			.	the same row and more than
.			.	one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".
				Note: Fields 13 thru 18 are not used in this record in this data file.
19	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1175,"LBIL","C1",1003,"IV  ",   1,"D ","E ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1176,"LBIL","C1",1004,"IV  ",   2,"D ","E ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1177,"LBIL","C1",9999,"IV  ",9999,"F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1178,"LBIL","C1",1109,"VI  ",   1,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1179	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"IV "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"G "	35-38	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 102) "	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                    1
         1         2         3         4         5         6         7         8         9         0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Sample records:
1179,"LBIL","F1",1003,"IV  ",   1,"D ", 1, 1,"Footnote text for footnote 1                          ","XQ"
1180,"LBIL","F1",1003,"IV  ",   1,"D ", 1, 2,"continuation text for footnote 1                      ","XQ"
1181,"LBIL","F1",1003,"IV  ",   1,"D ", 1, 3,"last line of footnote 1                               ","XQ"
1182,"LBIL","F1",1004,"IV  ",   2,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table IV row 2  ","XQ"
1183,"LBIL","F1",9999,"IV  ",,9999,"E ", 3, 1,"Footnote 3 pertains to all rows of Table IV column E  ","XQ"
1184,"LBIL","F1",1110,"VI  ",   2,"C ", 4, 1,"Footnote 4 pertains to Table VI row 2 column C        ","XQ"
```

RECORD TYPE E1 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1185	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E1"	13-16	Always contains the letter E capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"IV "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If an entire column, an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 12. Format: include quotation marks. left justified and space filled.

RECORD TYPE E1 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"D "	40-43	.....
9	Third Column Label	"F "	45-48	. Fields 8 thru 18 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".
				Note: Fields 13 thru 18 are not used in this record in this data file.
19	Footnote Number	1	95-96	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
20	End of Record Code	"XQ"	98-101	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample record:
1185,"LBIL","E1",1003,"IV  ",   1,"D ","E "," "," "," "," "," "," "," "," "," "," ", 1,"XQ"
1186,"LBIL","E1",1004,"IV  ",   2,"D ","E "," "," "," "," "," "," "," "," "," "," ", 2,"XQ"
1187,"LBIL","E1",1005,"IV  ",   3,"ZZ","  "," "," "," "," "," "," "," "," "," "," ", 0,"XQ"
1188,"LBIL","E1",9999,"IV  ",9999,"E "," "," "," "," "," "," "," "," "," "," ", 3,"XQ"
1189,"LBIL","E1",1110,"VI  ",   2,"C "," "," "," "," "," "," "," "," "," "," ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1099	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1099,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 495B, the Actual Usage of Investment Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All ratio fields must be rounded to 4 decimal places.
   Example: 0.12345678 should be entered as 0.1235

E. Page Layouts

The ten page layouts are illustrated on pages 3 through 12. The paper report will consist of the following pages, in order:

Table IV Page 1.1	See Page 3
Table IV Page 1.2 (if applicable)	See Page 4
Table IV Pages 2.1 through 2.2 (if additional pages needed)	See Pages 3 & 4
.	
.	
.	
Table IV Pages n.1 through n.2 (if additional pages needed)	See Pages 3 & 4
Table V Page 1.1	See Page 5
Table V Pages 1.2 through 1.3 (if applicable)	See Pages 6 & 7
Table V Pages 2.1 through 2.3 (if additional pages needed)	See Pages 5 - 7
.	
.	
.	
Table V Pages n.1 through n.3 (if additional pages needed)	See Pages 5 - 7
Table VI Page 1	See Page 8
Table VI Page 2 (if additional pages needed)	See Page 8
.	
.	
.	
Table VI Page n (if additional pages needed)	See Page 8
The Confidential Treatment Table (at least one page and as many pages as needed)	See Page 9
The Footnote Table (at least one page and as many pages as needed)	See Page 10
The Erratum Table (for submission number 2 or higher, as many pages as needed)	See Page 11
The Certification page	See Page 12

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE IV
COSA: xxxx PAGE x.1 of x

TABLE IV - ACTUAL APPORTIONMENT OF INVESTMENT DOLLARS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Total Investment$ (000) (c)	Nonreg Investment$ (000) (d)	Regulated Investment$ (000) (e)=(c)-(d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE IV
COSA: xxxx PAGE x.2 of x

TABLE IV - ACTUAL APPORTIONMENT OF INVESTMENT DOLLARS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Ratio of Nonreg Use (f)=(d)/(c)	Ratio of Regulated Use (g)=(e)/(c)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	0.1234	0.1234	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE V
COSA: xxxx PAGE x.1 of x

TABLE V - ACTUAL USAGE OF INVESTMENT UNITS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Allocator Unit of Use (c)	Units of Total Use (d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxxxxxxxx	123,456,789	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE V
COSA: xxxx PAGE x.2 of x

TABLE V - ACTUAL USAGE OF INVESTMENT UNITS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Units of Nonreg Use (e)	Units of Regulated Use (f)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE V
COSA: xxxx PAGE x.3 of x

TABLE V - ACTUAL USAGE OF INVESTMENT UNITS SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Cost Category

Row	Acct (a)	Cost Category (b)	Ratio of Nonreg Use (g)=(e)/(d)	Ratio of Regulated Use (h)=(f)/(d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxxx	0.1234	0.1234	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE VI
COSA: xxxx Page 1 OF x

TABLE VI - ACTUAL INVESTMENT SUMMARY SCHEDULE
For Central Office Equipment and Cable and Wire Facilities
by Account and Cost Category

Row	Acct (a)	Cost Category (b)	Total Investment$ (000) (c)	Nonreg Investment$ (000) (d)	Regulated Investment$ (000) (e)=(c)-(d)	
1234	1234	xxxxxx xxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	..Ruler Line

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234	x, x, x, x, x, x	. . . Ruler Line

sample entries:

IV	1	D, E	
IV	2	D, E	
IV	ALL	F	
VI	1	ALL	

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ..Ruler Line

sample entries:

IV	1	D	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
IV	2	ALL	2	Footnote 2 pertains to all columns of Table IV row 2
IV	ALL	E	3	Footnote 3 pertains to all rows of Table IV column E
VI	2	C	4	Footnote 4 pertains to Table VI row 2 column C

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 495B
ACTUAL USAGE OF INVESTMENT REPORT

Approved by OMB
3060-0410
Expires 03/31/91

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	Footnote	
(a)	(b)	(c)	(d)	
xxxx	1234	x, x, x, x, x, x	12	..Ruler Line
sample entries:				
IV	1	D, E	1	
IV	2	D, E	2	
IV	3	ALL		
IV	ALL	E	3	
VI	2	C	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the forecasts and/or actual data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabama	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Nevada	- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Missouri	- Missouri	COMO
	3. Contel of New York	- New York	CONY
	4. Contel of Texas	- Texas	COTX
	5. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
1.	General Telephone Company of California	- California	GTCA
2.	General Telephone Company of Florida	- Florida	GTFL
3.	General Telephone Company of the Northwest, Inc.		GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
4.	General Telephone Company of the South		GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RYNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	4. United Tel. Co. of Ohio	- Ohio	UTOH
	5. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	6. United Inter-Mountain Tel. Co.		UTIM
		- Tennessee	UTTN
		- Virginia	UTVA
Total Independent Companies			TICO
Total Industry			TOTL

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67 and 69 of the FCC's Rules)

ORDER

Adopted: May 27, 1988; Released: May 31, 1988

By the Deputy Chief, Common Carrier Bureau:

1. On October 30, 1987 the Common Carrier Bureau issued draft format and media specifications[1] for the quarterly automated report adopted by the Commission in its *ARMIS Order*.[2] The Bureau staff held extensive discussions with the industry and other interested persons and met several times with representatives from the United States Telephone Association. Revised drafts were circulated on March 8, 1988, on April 4, 1988, and on May 13, 1988. In this Order we adopt, with minor modifications, the format and media specifications proposed in our May 13, 1988 draft. The revised specifications can be found in the Attachment to this Order.

2. In the *ARMIS Order* the Commission required each local exchange carrier with operating revenues for the preceding year in excess of $100 million to file an automated report on a quarterly basis. This report includes revenues, expenses, taxes, plant in service, other investment, depreciation reserves, return data, and such other data required by the Commission. By March 31, June 30, September 30, and December 31 of each year, each carrier must file the report for the previous calendar quarter. The initial report will be filed by June 30, 1988 and will contain data for the first quarter of calendar year 1988.

3. The *Armis Order* did not contain the format and media specifications the carriers will need to file their reports. Instead, the Commission delegated the authority to determine and revise format and media for the reporting requirements to the Common Carrier Bureau. [3] The Commission directed the Bureau staff to consider informal comments from the industry and other interested persons regarding availability and compatibility before adopting the specifications.[4] In accordance with this requirement, on October 30, 1987, the Bureau produced a set of proposed detailed specifications for the quarterly report and invited informal comments.

4. The responses to our specifications indicated that the carriers could implement our proposal but that the collection and flow of data could be enhanced and streamlined if certain changes were made.[5] In response to the various suggestions, our staff held extensive discussions with the carriers concerning the format and media for the quarterly report. We believe the specifications that we have developed are fully responsive to the needs of the Commission and the industry. We, therefore, adopt the specifications for format and media as detailed in the Attachment to this Order.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

6. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201-205, 215, 219, and 220 of the Communications Act of 1934, 47 U.S.C. Sections 154(i), 154(j), 201-205, 215, 218, 219, and 220, that the instructions and specifications attached hereto ARE ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Letter from the Chief, Common Carrier Bureau to the Tier 1 exchange carrier contact list dated October 30, 1987.

[2] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 60 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987) (*ARMIS Order), petitions for* recon. pending.

[3] *Id.* at 5772.

[4] *Id.*

[5] Comments were received from Continental Telephone Company, NYNEX, the United States Telephone Association, and United Telephone System.

This document provides the instructions for FCC Report 43-01, the ARMIS Quarterly Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following five sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the page layout and detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-01, the ARMIS Quarterly Report, to the Commission.

B. General Information

1. FCC Report 43-01 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues for the preceding year in excess of $100 million.

2. Affected carriers shall file by March 31, June 30, September 30 and December 31 of each year the report for the previous calendar quarter. The initial report will be filed by June 30, 1988 and will contain data for the first quarter of calendar year 1988.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-01, which identifies the filing as the ARMIS Quarterly Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if

needed for successive revisions to correct that quarter's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. Data Items That Are "Not Available" or Are "Withheld"

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications and paragraph C.2 in the attached Paper Report Specifications for data entry conventions for these items.

D. Where to File

1. Carriers submitting FCC Report 43-01 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. Footnotes

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances not explained in a previous report, then include footnote text to explain the occasioning facts.

2. This footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

F. Errata

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-01. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the attached Automated Report Specifications and the attached Paper Report Specifications.

G. Certification

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-01 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 16 of the attached Paper Report Specifications.

H. Waivers

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-01, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Carriers are strongly encouraged to comply with the requirements. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. Public Information

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-01 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-01 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Adrianne Brent
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

SUMMARY

This document contains the Report Definition for FCC Report 43-01, the ARMIS Quarterly Report; it lists the revenue, revenue requirement, and demand data which must be provided quarterly by study area. Pages 2 and 3 illustrate the general form of the data; however, more detailed specifications are provided in the attached Page Layout and in the attached ADP Specifications. Page 2 illustrates Table I, the Cost and Revenue Table. Each line on page 2 is an element related to a study area's revenue or revenue requirement and each column is a cost category or access element specified in our Rules. Page 3 illustrates Table II, the Demand Analysis Table, which consists of selected demand data. Pages 4, 5 and 6 describe the line entries for page 2, and pages 7 and 8 describe the column entries. Pages 9 and 10 describe the demand data entries for page 3. All monetary figures must be rounded to the nearest thousand dollars. All minutes of use figures must be rounded to the nearest thousand; all access line figures must be provided in whole numbers.

TABLE 1 - COST AND REVENUE TABLE
(Dollars in thousands)

Classification	Total	Nonreg.	Other Adjustments	Subject to Separations	State	Interstate	Common Line	Traffic Sensitive			Special Access	Total Access	Non-Access
								Switch	Transport	Information			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
Revenues													
1. Network Access													
2. Local Network													
3. Toll Network													
4. Miscellaneous													
5. AFUDC													
6. Uncollectibles													
7. Net Revenues													
Expenses													
8. Plant Specific													
9. Plant Non-specific Less Depr.													
10. Marketing													
11. Customer Operations Services													
12. Access													
13. Corporate Operations													
14. Extraordinary													
15. FCC Expense Adjustment													
16. Subtotal													
17. Depreciation/amortization													
18. Total Expenses													
Other Taxes													
19. State and Local Income													
20. Other State and Local													
21. Total Other Taxes													
FIT													
22. Fixed Charges													
23. IRS Income Adjustment													
24. FCC Taxable Income Adjustment													
25. ITC Amortization													
26. FCC ITC Adjustment													
27. Net FIT													
Plant-in-Service													
28. Support Plant													
29. COE-Switching													
30. COE-Transmission													
31. Cable and Wire													
32. Information													
33. Amortizable Assets													
34. Total Plant													
Other Investments													
35. Property Held for Future Use													
36. Plant Under Construction													
37. Plant (Acquisition) Adjustment													
38. Other Deferred Charges													
39. Material and Supplies													
40. Cash Working Capital													
41. FCC Investment Adjustment													
42. Total Other Investments													
Reserves													
43. Depreciation													
44. Amortization													
45. Deferred FIT													
46. Customer Deposits													
47. FCC Reserve Adjustment													
48. Total Reserves													
Return Data													
49. Beginning Net Investment													
50. Ending Net Investment													
51. Average Net Investment													
52. Net Return													
53. Rate of Return													
54. FCC Ordered Refund													
55. Net Return Including FCC Refund													
56. Rate of Return (including refund)													
57. Universal Service Fund													

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA

Classification	Month 1	Month 2	Month 3
(a)	(b)	(c)	(d)
COMMON LINE DEMAND-MOU			
Premium:			
1. Originating			
2. Terminating			
Non-Premium:			
3. Originating			
4. Terminating			
SWITCHED TRAFFIC SENS. DEMAND-MOU			
5. Premium			
6. Non-Premium			

QUARTERLY DATA

Classification	Quarter x
(a)	(b)
COMMON LINE DEMAND	
Carrier Common Line:	
7. Originating	
8. Terminating	
9. Single Line Business C. P. T.	
10. Residence CPT Lifeline	
11. Residence CPT Non-Lifeline	
12. Multiline Business	
13. Centrex Co and CTX Like Lines	
14. Special Access Lines Subject to Surcharge	
15. Total Access Lines	

TABLE I LINE ITEM DESCRIPTIONS

Line	Item Description
	Revenues
1.	Network Access - The total of accounts 5081 through 5084.
2.	Local Network Services - The total of accounts 5001 through 5069.
3.	Toll Network Services - The total of accounts 5100, 5111, 5112 and 5121 through 5169.
4.	Miscellaneous - The total of accounts 5230 through 5250, 5261 through 5270, 7110 and 7140.
5.	Allowance for Funds Used During Construction (AFUDC) - Account 7340.
6.	Uncollectibles - The total of accounts 5301 and 5302.
7.	Net Revenues - The total of lines 1 through 5, less line 6.
	Expenses
8.	Plant Specific - The total of accounts 6112 through 6116, 6121 through 6124, 6211 through 6220, 6231, 6232, 6311 through 6362, and 6411 through 6441.
9.	Plant Non-Specific less Depreciation - The total of accounts 6511, 6512, and 6531 through 6535.
10.	Marketing - The total of accounts 6611 through 6613.
11.	Customer Operations Services - The total of accounts 6621 through 6623.
12.	Access - Account 6540.
13.	Corporate Operations - The total of accounts 6711, 6712, and 6721 through 6728 and 6790.
14.	Extraordinary Items - The total of applicable portions of accounts 7370, 7610, 7620, 7630 and 7640.
15.	FCC Expense Adjustment - This shall contain the net of: (1) expense and other tax items not included in Lines 8 through 14, 17, 19 and 20 which the Commission has expressly allowed for ratemaking purposes; and (2) expense and other tax items included in lines 8 through 14, 17, 19 and 20 which the Commission has expressly excluded for ratemaking purposes.
16.	Subtotal - The total of lines 8 through 15.
17.	Depreciation/Amortization - The total of accounts 6561 through 6565.
18.	Total Expenses - The total of lines 16 and 17.
	Other Taxes
19.	State and Local Income - The total of accounts 7230 and a portion of 7250.
20.	Other State and Local - The total of accounts 7240 and a portion of 7250.
21.	Subtotal - The total of lines 19 and 20.

Federal Income Taxes

22. Fixed charges - the total of accounts 7510 through 7540.
23. IRS Income Adjustment - this is the difference between taxable income reported for IRS purposes and the taxable income shown in accordance with the USOA.
24. FCC Taxable Income Adjustment - This shall contain the net of: (1) taxable income not included above, (i. e., line 7 plus line 23 less lines 18, 21 and 22), which the Commission has expressly allowed for ratemaking purposes; and (2), taxable income included above, which the Commission expressly excluded for ratemaking purposes.
25. Investment Tax Credit Amortization - Account 7210.
26. FCC Investment Tax Credit Adjustment - This shall contain the net of: (1) ITC not included in line 25 which the Commission has expressly allowed for ratemaking purposes; and (2), the ITC included in line 25, which the Commission expressly excluded for ratemaking purposes.
27. Federal Income Tax and Deferred Operating Income Taxes-Net - The total of accounts 7220 and FIT portions of accounts 7250, 7630 and 7640, adjusted for ratemaking purposes. It should be determined by applying the applicable federal income tax rate to the adjusted taxable income (i.e., line 7 plus lines 23 and 24 less lines 18, 21, and 22) less lines 25 and 26.

Plant-in-Service

28. General Support Plant - The total of accounts 2111 through 2124.
29. Central Office Equipment-Switching - The total of accounts 2211 through 2215 and 2220.
30. Central Office Equipment-Transmission - The total of accounts 2231 and 2232.
31. Cable and Wire Facilities - The total of accounts 2411 through 2441.
32. Information Origination/Termination Equipment - The total of accounts 2311 through 2362.
33. Amortizable Assets - The total of accounts 2681, 2682 and 2690.
34. Total Plant - The total of lines 28 through 33.

Other Investments

35. Property Held for Future Telecommunications Use - Account 2002.
36. Telecommunications Plant Under Construction-Short Term - Account 2003.
37. Plant (Acquisition) Adjustment - Account 2005.
38. Other Deferred Charges - Account 1439.
39. Material and Supplies - Account 1220.
40. Cash Working Capital -Accounts 1130 through 1160.
41. FCC Investment Adjustment - this shall contain the net of: (1) investment items not included on lines 28 through 33 and 35 through 40 which the Commission has expressly allowed for ratemaking purposes; and (2) investment items included on lines 28 through 33 and 35 through 40 which the Commission has expressly excluded for ratemaking purposes.
42. Total Other Investments - The total of lines 35 through 41.

Reserves

43. Accumulated Depreciation - Accounts 3100 and 3200.
44. Accumulated Amortization - The total of accounts 3410, 3420, 3500 and 3600.
45. Deferred Operating Income Taxes - The total of accounts 4100 and 4340.
46. Customer Deposits - Account 4040.
47. FCC Reserve Adjustment - this shall contain the net of: (1) reserve items not included on lines 43 through 46 which the Commission has expressly allowed for ratemaking purposes; and (2) reserve items included on Lines 43 through 46 which the Commission has expressly excluded for ratemaking purposes.
48. Total Investment Deductions - The total of lines 43 through 47.

Return Data

49. Beginning Net Investment - Line 50, as demonstrated on this chart, for the previous reporting period.
50. Ending Net Investment - The total of lines 34 and 42 less line 48.
51. Average Net Investment - Line 49 plus line 50 divided by 2.
52. Net Return - For the BOCs this amount is line 7 less lines 5, 18, 21 and 27. For the other LECs this amount is line 7 less lines 18, 21 and 27.
53. Rate of Return - Line 52 divided by line 51, multiplied by 4, multiplied by 100.
54. FCC Ordered Refund - The refund should be developed in accordance with Docket 84-800, Phase I.
55. Net Return Including FCC Refund - The total of lines 52 and 54.
56. Rate of Return Including Refund - Line 55 divided by line 51, multiplied by 4, multiplied by 100.
57. Universal Service Fund - Carriers with higher than average non-traffic-sensitive loop costs must report their interstate allocation, as reported to NECA for this reporting period, on this line.

TABLE I COLUMN DESCRIPTIONS

Column	Description
b.	Total - This amount represents the operating results for each of the accounts itemized in this report, and includes all regulated and nonregulated company operations for each line item. These amounts are represented prior to separation between state and interstate jurisdictions.
c.	Nonregulated - This amount represents adjustments made to each item in compliance with CC Docket 86-111 for each line item.
d.	Other Adjustments - This amount represents adjustments made to each item for reasons not associated with CC Docket 86-111 compliance, such as costs relative to shared network facility arrangements and intra-company subsidiary contracts.
e.	Subject to Separation - This amount represents that portion of each account which must be allocated between state and interstate jurisdictions (column b less columns c and d).
f.	State - This amount represents that portion of each account that is allocated to the state jurisdiction for which this schedule is being filed, pursuant to Part 36 of our Rules.
g.	Interstate - This amount represents that portion of each line item allocated to the interstate jurisdiction for which this schedule is being filed, pursuant to Part 36 of our Rules.
h.	Common Line - This amount represents that portion of each line item applicable to the total of end user common line charges and carrier common line charges. An end user common line charge is assessed upon end users who subscribe to local exchange telephone service, Centrex or semi-public coin telephone service to the extent that they do not pay carrier common line charges. A carrier common line charge is assessed upon all interexchange carriers who use local exchange common line facilities for the provision of interstate or foreign telecommunications services.
i.	Switch - This amount represents that portion of each line item applicable to local switching charges which are assessed upon all interexchange carriers who use local exchange switching facilities for the provision of interstate or foreign services.

j. Transport - This amount represents that portion of each line item applicable to charges assessed upon all interexchange carriers who use switching or transport facilities that are apportioned to the Transport element or elements for purposes of apportioning net investment.

k. Information - This amount represents that portion of each line item applicable to charges assessed upon all interexchange carriers who are connected to assistance boards through interexchange directory assistance trunks.

l. Special Access - This amount represents that portion of each line item applicable to the total of all sub-elements that have been established for the use of equipment or facilities assigned to the Special Access element for purposes of apportioning net investment.

m. Total Access - This amount is the total of columns h through l.

n. Non-Access - This amount is column g less column m.

TABLE II - DEMAND ANALYSIS TABLE

DEFINITIONS

Originating minutes of use (MOU) is a measurement of traffic on originating MTS and MTS-like common lines.

Terminating MOU is a measurement of traffic on terminating MTS and MTS-like, originating 800, terminating outWATS, originating open-end-FX and terminating open-end-FX common lines.

Premium carrier common line (CCL) MOU is a measurement of Feature Group A (FGA) and Feature Group B (FGB) traffic originating from or terminating at offices converted to equal access, plus all Feature Group C (FGC), Feature Group D (FGD), and interstate/intraLATA MOU, excluding closed-end WATS and WATS type MOU.

Non-Premium CCL MOU is a measurement of FGA and FGB access MOU originating and/or terminating at offices not converted to equal access.

The first six lines of this table should contain monthly details of quarterly data. Lines 7 through 15 should be reported quarterly.

QUARTERLY REPORTING WITH MONTHLY DETAILS

Line	DESCRIPTION
1.	Originating Premium CCL MOU is calculated by dividing the originating premium CCL revenue reported to the pool by the originating premium CCL rate.
2.	Terminating Premium CCL MOU is calculated by dividing the terminating premium CCL revenue reported to the pool by the terminating premium CCL rate.
3.	Originating Non-Premium CCL MOU is calculated by dividing the originating Non-Premium CCL revenues reported to the pool by the product of the originating premium rate and .45.
4.	Terminating Non-Premium CCL MOU is calculated by dividing the terminating Non-Premium CCL revenues reported to the pool by the product of the terminating premium CCL rate and .45.
5.	Total premium traffic sensitive MOU is calculated by dividing adjusted premium line termination revenues by the line termination rate.

Line	DESCRIPTION
6.	Total Non-Premium traffic sensitive MOU is calculated by dividing the adjusted Non-Premium traffic sensitive line termination revenues by the product of the line termination rate and .45.

QUARTERLY DATA

7.	Carrier common line chargeable originating minutes of use.
8.	Carrier common line chargeable terminating minutes of use.
9.	Single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units". A CPT is a line termination at the customer premises, rather than at the central office.
10.	Residence lifeline CPTs for which the interstate subscriber line charge is reduced or waived. The decision to implement a lifeline plan is left to the individual state commission.
11.	Residence non-lifeline CPTs subject to the residence interstate subscriber line charge, excluding lifeline CPTs.
12.	Multiline business CPTs subject to the multiline business interstate subscriber line charge including multiline semi-public lines, PBX trunks, Centrex CU trunks, hotel/motel LD trunks and Centrex CO lines ordered after July 27, 1983.
13.	Centrex CO and CTX CO-like lines in service or ordered as of July 27, 1983.
14.	Special access lines subject to a $25 surcharge, including WATS lines, as appropriate, after June 1, 1986.
15.	Total access lines is the sum of lines 9 through 14.

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has seven components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letter "Q".
   d. the number of the quarter which is covered by the data.
   e. a decimal point.
   f. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   g. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission.

   For example, the file name for the Confidential Version of the initial quarterly report data file to be submitted by Illinois Bell to cover the first quarter of calendar year 1988, would be LBIL88Q1.C01:

LBIL	COSA for Illinois Bell
88	Data for calendar year 1988
Q	Quarterly Report data file
1	Data for the first quarter
.	decimal point
C	Confidential version
01	First submission of this quarter's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (particular attention is called to the revenue item Uncollectibles; this figure, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g. use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ___123, NOT 123___. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for rate of return data fields (Rate of Return and Rate of Return including Refund), which will include a decimal point but not a percent sign.

5. In any numeric data field for which data is "Not Available", enter -99999. On the "Public Version" diskette in any numeric data field for which the data is "Withheld", enter -88888. These entries should be formatted according to the format rules for the particular data field; e.g., in the Rate of Return field, -99999 would be entered as -99999.00

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 decimal places.

Example: 12 2/3 percent should be entered as 12.67

E. Data Record Descriptions

The nine data record types are described below. See pages 5 through 17 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 57 Type R1 records, followed by six Type M1 records, followed by nine Type Q1 records, followed by one or more Type C1 records, followed by zero or more Type F1 records, followed by zero or more Type E1 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 5 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 6 for record layout.
Record Type R1	Revenue Requirement Data Record	57 Type R1 records per file. One record for each of the 57 rows shown on Pages 2, 4, 5 & 6 of the accompanying Report Definition. Each record contains data values for that particular revenue or revenue requirement element broken out by the cost categories and access elements shown on Pages 2, 7 & 8 of the Report Definition. See pages 7 & 8 for record layout.
Record Type M1	Demand Analysis Monthly Data Record	Six Type M1 records per file. One record for each of the 6 rows of monthly demand analysis data shown on Pages 3, 9 & 10 of the accompanying Report Definition. Each record contains monthly details of minutes of use data. See page 9 for record layout.

Record Type Q1	Demand Analysis Quarterly Data Record	Nine Type Q1 records per file. One record for each of the 9 rows of quarterly demand analysis data shown on Pages 3 and 10 of the accompanying Report Definition. Each record contains quarterly minutes of use data and access line data. See page 10 for record layout.
Record Type C1	Confidential Treatment Record	One or more Type C1 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 11 & 12 for record layout.
Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See page 13 & 14 for record layout.
Record Type E1	Erratum Record	Zero Type E1 records in the first submission of a quarter's data. One or more Type E1 records per file in revisions filed to correct that quarter's submission. Contains information to identify the data which was corrected in this submission. See pages 15 & 16 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 17 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL88Q1.C01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1988	33-36	The year covered by the data.
6	Quarter #	1	38	The quarter number covered by the data. 1 for January to March 2 for April to June 3 for July to September 4 for October to December
7	Data Entry Date	19880615	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"C"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
      1         2         3         4         5              . . . . .     Ruler line
12345678901234567890123456789012345678901234567890123456789  . . . . .     Ruler line
Sample record:
1001,"LBIL","H1","LBIL88Q1.C01",1988,1,19880615,"C", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-01"	18-35	Always contains "FCC REPORT 43-01" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1988 to Mar 1988"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                    1         1
         1         2         3         4         5         6         7         8         9         0         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1002,"LBIL","L1","FCC REPORT 43-01","Illinois Bell                ","Illinois        ","Jan 1988 to Mar 1988","XQ"
```

RECORD TYPE R1 - REVENUE REQUIREMENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1003	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"R1"	13-16	Always contains the letter R capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	100	18-21	Row number as shown on the attached Paper Report Specifications. Valid range: 100 to 950 Format: right justified and space filled.
5	Column (b) data	81728 -OR- 12.00	23-31	This field contains the data corresponding to column (b) as shown on Pages 2 thru 11 of the attached Paper Report Specs. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows to indicate that the data is not available. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	33-41	Column (c) data Format: see Field 5 above.
7	Column (d) data	5432	43-51	Column (d) data Format: see Field 5 above.
8	Column (e) data	70864	53-61	Column (e) data Format: see Field 5 above.
9	Column (f) data	5432	63-71	Column (f) data Format: see Field 5 above.
10	Column (g) data	65432	73-81	Column (g) data Format: see Field 5 above.
11	Column (h) data	5432	83-91	Column (h) data Format: see Field 5 above.
12	Column (i) data	5432	93-101	Column (i) data Format: see Field 5 above.

RECORD TYPE R1 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
13	Column (j) data	5432	103-111	Column (j) data Format: see Field 5 above.
14	Column (k) data	5432	113-121	Column (k) data Format: see Field 5 above.
15	Column (l) data	5432	123-131	Column (l) data Format: see Field 5 above.
16	Column (m) data	27160	133-141	Column (m) data Format: see Field 5 above.
17	Column (n) data	38272	143-151	Column (n) data Format: see Field 5 above.
18	End of Record Code	"XQ"	153-156	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type R1, M1, Q1 and C1 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5         6         7         8         9
123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Sample record:
1003,"LBIL","R1", 100,    81728,    5432,     5432,     70864,    5432,     65432,    5432,
```

```
        1         1         1         1         1         1
9       0         1         2         3         4         5
3456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
Continuation of sample record:
     5432,     5432,     5432,     5432,    27160,    38272,"XQ"
```

RECORD TYPE M1 - DEMAND ANALYSIS MONTHLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1060	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"M1"	13-16	Always contains the letter M capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2010	18-21	Row number as shown on Page 12 of the attached Paper Report Specifications. Valid range: 2010 to 2060 Format: right justified and space filled.
5	Data for the first month of the quarter	5432	23-31	This field contains the data corresponding to the first month of the quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Data for the second month of the quarter	5654	33-41	This field contains the data corresponding to the second month of the quarter. Format: see Field 5 above.
7	Data for the third month of the quarter	5876	43-51	This field contains the data corresponding to the third month of the quarter. Format: see Field 5 above.
8	End of Record Code	"XQ"	53-56	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type M1, Q1 and C1 records) containing footnote text to explain the occasioning facts.

```
        1         2         3         4         5
12345678901234567890123456789012345678901234567890123456
Sample record:
1060,"LBIL","M1",2010,     5432,     5654,     5876,"XQ"
```

RECORD TYPE Q1 - DEMAND ANALYSIS QUARTERLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1066	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"Q1"	13-16	Always contains the letter Q capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2070	18-21	Row number as shown on Page 12 of the attached Paper Report Specifications. Valid range: 2070 to 2150. Format: right justified and space filled.
5	Quarterly data	5432	23-31	This field contains the data corresponding to the entire quarter. Format: right justified and space filled. Enter -99999 to indicate that the data is not available. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	33-36	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, add one or more Type F1 records (after the remaining Type Q1 and C1 records) containing footnote text to explain the occasioning facts.

```
         1         2         3
1234567890123456789012345678901234567
Sample record:
1066,"LBIL","Q1",2070,     5432,"XQ"
```

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1075	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C1"	13-16	Always contains the letter C capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1003	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for an entire column, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. Format: include quotation marks. left justified and space filled.
6	Row Number	100	30-33	This field contains the row number of the row which contains the confidential data as identified in the attached Paper Report Specs. If the request is for an entire column, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the attached Paper Report Specs. If the request is for an entire row, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 18. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 18. Format: include quotation marks. left justified and space filled.
8	Second Column Label	"F "	40-43	.....
9	Third Column Label	"K "	45-48	. Fields 8 thru 18 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".

RECORD TYPE C1 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
19	End of Record Code	"XQ"	95-98	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1075,"LBIL","C1",1003,"I   ", 100,"C ","F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1076,"LBIL","C1",1009,"I   ", 190,"C ","F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1077,"LBIL","C1",9999,"I   ",9999,"N ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
1078,"LBIL","C1",1060,"II  ",2010,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1079	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1003	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	100	30-33	This field contains the row number of the row which contains the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the footnoted data as identified in the attached Paper Report Specifications. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text (spaces until pos. 102) "	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1079,"LBIL","F1",1003,"I   ", 100,"C ", 1, 1,"Footnote text for footnote 1                        ","XQ"
1080,"LBIL","F1",1003,"I   ", 100,"C ", 1, 2,"continuation text for footnote 1                   ","XQ"
1081,"LBIL","F1",1003,"I   ", 100,"C ", 1, 3,"last line of footnote 1                            ","XQ"
1082,"LBIL","F1",1021,"I   ", 360,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table I row 360 ","XQ"
1083,"LBIL","F1",9999,"I   ",9999,"F ", 3, 1,"Footnote 3 pertains to all rows of Table I column F   ","XQ"
1084,"LBIL","F1",1060,"II  ",2010,"B ", 4, 1,"Footnote 4 pertains to Table II row 2010 column B     ","XQ"
```

RECORD TYPE E1 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1085	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E1"	13-16	Always contains the letter E capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1003	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If an entire column, an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If an entire table or submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	100	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the attached Paper Report Specifications. If an entire column, an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the attached Paper Report Specifications. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 18. Format: include quotation marks. left justified and space filled.

RECORD TYPE E1 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"D "	40-43	.....
9	Third Column Label	"F "	45-48	. Fields 8 thru 18 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
18	Twelfth Column Label	"N "	90-93	..... Otherwise, enter " ".
19	Footnote Number	1	95-96	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
20	End of Record Code	"XQ"	98-101	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
         1         2         3         4         5         6         7         8         9         1
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890
Sample record:
1085,"LBIL","E1",1003,"I   ", 100,"C ","F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
1086,"LBIL","E1",1009,"I   ", 190,"C ","F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
1087,"LBIL","E1",1021,"I   ", 360,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
1088,"LBIL","E1",9999,"I   ",9999,"F ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
1089,"LBIL","E1",1060,"II  ",2010,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1099	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1099,"LBIL","T1","John Doe                                          ","(202) 555-1212 x123 ","XQ"
```

A. Introduction

This document contains the page layout and detailed specifications for the paper report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the page layouts with the column titles are included only to assist the reader. Do not include ruler lines as lines in the report.

C. Data Entry Conventions

1. Standard accounting procedures will apply in determining the nature of any entry (e.g., the revenue item Uncollectibles, a debit entry, shall be entered as a "positive" number unless the balance therein reported is a credit). Entries of a reverse or contrary character shall be indicated by the placing of a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. In any numeric data field for which the data is "Not Available", enter N/A. On the "Public Version" report in any numeric data field for which the data is "Withheld", enter W/H.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return data fields (Rate of Return and Rate of Return including Refund) must be entered in percent and must be rounded to 2 places. Example: 12 2/3 percent should be entered as 12.67

E. Page Layouts

The fifteen page layouts are illustrated on pages 12 through 16. The paper report will consist of the following pages, in order:

Table I Pages 1.1 through 1.5.
Table I Pages 2.1 through 2.5.
Table II Page 1.
The Confidential Treatment Table (at least one page and as many pages as needed).
The Footnote Table (at least one page and as many pages as needed).
The Erratum Table (for submission number 2 or higher, as many pages as needed).
The Certification page.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.1 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Total	Nonreg.	Other Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
100	Network Access				
110	Local Network				
120	Toll Network				
130	Miscellaneous				
140	AFUDC				
150	Uncollectibles				
190	Net Revenues				
	Expenses				
200	Plant Specific				
210	Plant Non-specific Less Depr.				
220	Marketing				
230	Customer Operations Services				
240	Access				
250	Corporate Operations				
270	Extraordinary				
280	FCC Expense Adjustment				
290	Subtotal				
320	Depreciation/amortization				
350	Total Expenses				
	Other Taxes				
360	State and Local Income				
370	Other State and Local				
380	Total Other Taxes				
	FIT				
410	Fixed Charges				
400	IRS Income Adjustment				
430	FCC Taxable Income Adjustment				
420	ITC Amortization				
440	FCC ITC Adjustment				
500	Net FIT				

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.2 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Subject to Separations	State	Interstate	
	(a)	(e)	(f)	(g)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
100	Network Access				
110	Local Network				
120	Toll Network				
130	Miscellaneous				
140	AFUDC				
150	Uncollectibles				
190	Net Revenues				
	Expenses				
200	Plant Specific				
210	Plant Non-specific Less Depr.				
220	Marketing				
230	Customer Operations Services				
240	Access				
250	Corporate Operations				
270	Extraordinary				
280	FCC Expense Adjustment				
290	Subtotal				
320	Depreciation/amortization				
350	Total Expenses				
	Other Taxes				
360	State and Local Income				
370	Other State and Local				
380	Total Other Taxes				
	FIT				
410	Fixed Charges				
400	IRS Income Adjustment				
430	FCC Taxable Income Adjustment				
420	ITC Amortization				
440	FCC ITC Adjustment				
500	Net FIT				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.3 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Common Line	
	(a)	(h)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	... Ruler Line
	Revenues		
100	Network Access		
110	Local Network		
120	Toll Network		
130	Miscellaneous		
140	AFUDC		
150	Uncollectibles		
190	Net Revenues		
	Expenses		
200	Plant Specific		
210	Plant Non-specific Less Depr.		
220	Marketing		
230	Customer Operations Services		
240	Access		
250	Corporate Operations		
270	Extraordinary		
280	FCC Expense Adjustment		
290	Subtotal		
320	Depreciation/amortization		
350	Total Expenses		
	Other Taxes		
360	State and Local Income		
370	Other State and Local		
380	Total Other Taxes		
	FIT		
410	Fixed Charges		
400	IRS Income Adjustment		
430	FCC Taxable Income Adjustment		
420	ITC Amortization		
440	FCC ITC Adjustment		
500	Net FIT		

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.4 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive		
	Classification	Switch	Transport	Information
	(a)	(i)	(j)	(k)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789

... Ruler Line

Revenues
100 Network Access
110 Local Network
120 Toll Network
130 Miscellaneous
140 AFUDC
150 Uncollectibles
190 Net Revenues

Expenses
200 Plant Specific
210 Plant Non-specific Less Depr.
220 Marketing
230 Customer Operations Services
240 Access
250 Corporate Operations
270 Extraordinary
280 FCC Expense Adjustment
290 Subtotal
320 Depreciation/amortization
350 Total Expenses

Other Taxes
360 State and Local Income
370 Other State and Local
380 Total Other Taxes

FIT
410 Fixed Charges
400 IRS Income Adjustment
430 FCC Taxable Income Adjustment
420 ITC Amortization
440 FCC ITC Adjustment
500 Net FIT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 1.5 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Special Access	Total Access	Non-Access	
	(a)	(l)	(m)	(n)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Revenues				
100	Network Access				
110	Local Network				
120	Toll Network				
130	Miscellaneous				
140	AFUDC				
150	Uncollectibles				
190	Net Revenues				
	Expenses				
200	Plant Specific				
210	Plant Non-specific Less Depr.				
220	Marketing				
230	Customer Operations Services				
240	Access				
250	Corporate Operations				
270	Extraordinary				
280	FCC Expense Adjustment				
290	Subtotal				
320	Depreciation/amortization				
350	Total Expenses				
	Other Taxes				
360	State and Local Income				
370	Other State and Local				
380	Total Other Taxes				
	FIT				
410	Fixed Charges				
400	IRS Income Adjustment				
430	FCC Taxable Income Adjustment				
420	ITC Amortization				
440	FCC ITC Adjustment				
500	Net FIT				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.1 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Total	Nonreg.	Other Adjustments	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Plant-in-Service				
600	Support Plant				
610	COE-Switching				
620	COE-Transmission				
630	Cable and Wire				
640	Information				
650	Amortizable Assets				
690	Total Plant				
	Other Investments				
700	Property Held for Future Use				
710	Plant Under Construction				
720	Plant (Acquisition) Adjustment				
730	Other Deferred Charges				
740	Material and Supplies				
750	Cash Working Capital				
760	FCC Investment Adjustment				
790	Total Other Investments				
	Reserves				
800	Depreciation				
810	Amortization				
820	Deferred FIT				
830	Customer Deposits				
840	FCC Reserve Adjustment				
890	Total Reserves				
	Return Data				
902	Beginning Net Investment				
904	Ending Net Investment				
900	Average Net Investment				
590	Net Return				
910	Rate of Return				
920	FCC Ordered Refund				
930	Net Return Including FCC Refund				
940	Rate of Return (including refund)				
950	Universal Service Fund				

If applicable:
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.2 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Subject to Separations	State	Interstate	
	(a)	(e)	(f)	(g)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Plant-in-Service				
600	Support Plant				
610	COE-Switching				
620	COE-Transmission				
630	Cable and Wire				
640	Information				
650	Amortizable Assets				
690	Total Plant				
	Other Investments				
700	Property Held for Future Use				
710	Plant Under Construction				
720	Plant (Acquisition) Adjustment				
730	Other Deferred Charges				
740	Material and Supplies				
750	Cash Working Capital				
760	FCC Investment Adjustment				
790	Total Other Investments				
	Reserves				
800	Depreciation				
810	Amortization				
820	Deferred FIT				
830	Customer Deposits				
840	FCC Reserve Adjustment				
890	Total Reserves				
	Return Data				
902	Beginning Net Investment				
904	Ending Net Investment				
900	Average Net Investment				
590	Net Return				
910	Rate of Return				
920	FCC Ordered Refund				
930	Net Return Including FCC Refund				
940	Rate of Return (including refund)				
950	Universal Service Fund				

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.3 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Common Line	
	(a)	(h)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	. . . . . Ruler Line
	Plant-in-Service		
600	Support Plant		
610	COE-Switching		
620	COE-Transmission		
630	Cable and Wire		
640	Information		
650	Amortizable Assets		
690	Total Plant		
	Other Investments		
700	Property Held for Future Use		
710	Plant Under Construction		
720	Plant (Acquisition) Adjustment		
730	Other Deferred Charges		
740	Material and Supplies		
750	Cash Working Capital		
760	FCC Investment Adjustment		
790	Total Other Investments		
	Reserves		
800	Depreciation		
810	Amortization		
820	Deferred FIT		
830	Customer Deposits		
840	FCC Reserve Adjustment		
890	Total Reserves		
	Return Data		
902	Beginning Net Investment		
904	Ending Net Investment		
900	Average Net Investment		
590	Net Return		
910	Rate of Return		
920	FCC Ordered Refund		
930	Net Return Including FCC Refund		
940	Rate of Return (including refund)		
950	Universal Service Fund		

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.4 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

		Traffic Sensitive		
	Classification	Switch	Transport	Information
	(a)	(i)	(j)	(k)
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789

... Ruler Line

Plant-in-Service

600 Support Plant
610 COE-Switching
620 COE-Transmission
630 Cable and Wire
640 Information
650 Amortizable Assets
690 Total Plant

Other Investments

700 Property Held for Future Use
710 Plant Under Construction
720 Plant (Acquisition) Adjustment
730 Other Deferred Charges
740 Material and Supplies
750 Cash Working Capital
760 FCC Investment Adjustment
790 Total Other Investments

Reserves

800 Depreciation
810 Amortization
820 Deferred FIT
830 Customer Deposits
840 FCC Reserve Adjustment
890 Total Reserves

Return Data

902 Beginning Net Investment
904 Ending Net Investment
900 Average Net Investment
590 Net Return
910 Rate of Return
920 FCC Ordered Refund
930 Net Return Including FCC Refund
940 Rate of Return (including refund)
950 Universal Service Fund

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
SEE THE CONFIDENTIAL TREATMENT TABLE FOR SPECIFIC INFORMATION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

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3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE I
COSA: xxxx PAGE 2.5 OF 2

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

	Classification	Special Access	Total Access	Non-Access	
	(a)	(l)	(m)	(n)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	Plant-in-Service				
600	Support Plant				
610	COE-Switching				
620	COE-Transmission				
630	Cable and Wire				
640	Information				
650	Amortizable Assets				
690	Total Plant				
	Other Investments				
700	Property Held for Future Use				
710	Plant Under Construction				
720	Plant (Acquisition) Adjustment				
730	Other Deferred Charges				
740	Material and Supplies				
750	Cash Working Capital				
760	FCC Investment Adjustment				
790	Total Other Investments				
	Reserves				
800	Depreciation				
810	Amortization				
820	Deferred FIT				
830	Customer Deposits				
840	FCC Reserve Adjustment				
890	Total Reserves				
	Return Data				
902	Beginning Net Investment				
904	Ending Net Investment				
900	Average Net Investment				
590	Net Return				
910	Rate of Return				
920	FCC Ordered Refund				
930	Net Return Including FCC Refund				
940	Rate of Return (including refund)				
950	Universal Service Fund				

If applicable:
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ARMIS QUARTERLY REPORT

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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy TABLE II
COSA: xxxx PAGE 1 OF 1

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA

	Classification	Month 1	Month 2	Month 3	
	(a)	(b)	(c)	(d)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	123,456,789	123,456,789	... Ruler Line
	COMMON LINE DEMAND-MOU				
	Premium:				
2010	Originating				
2020	Terminating				
	Non-Premium:				
2030	Originating				
2040	Terminating				
	SWITCHED TRAFFIC SENS. DEMAND-MOU				
2050	Premium				
2060	Non-Premium				

QUARTERLY DATA

	Classification	Quarter x	
	(a)	(b)	
xxxx	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	123,456,789	. . . . . Ruler Line
	COMMON LINE DEMAND		
	Carrier Common Line:		
2070	Originating		
2080	Terminating		
2090	Single Line Business C. P. T.		
2100	Residence CPT Lifeline		
2110	Residence CPT Non-Lifeline		
2120	Multiline Business		
2130	Centrex Co and CTX Like Lines		
2140	Special Access Lines Subject to Surcharge		
2150	Total Access Lines		

If applicable:
THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR SOME DATA ON THIS PAGE.
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COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)	
(a)	(b)	(c)	
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x	. . . . . Ruler Line

sample entries:

I	100	C, F
I	190	C, F
I	ALL	N
II	2010	ALL

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA IN THIS REPORT.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
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Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line

sample entries:

I	100	C	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1
I	360	ALL	2	Footnote 2 pertains to all columns of Table I row 360
I	ALL	F	3	Footnote 3 pertains to all rows of Table I column F
II	2010	B	4	Footnote 4 pertains to Table II row 2010 column B

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: mmm yyyy to mmm yyyy ERRATUM TABLE
COSA: xxxx PAGE 1 OF x

ERRATUM TABLE

Table	Row	Column(s)	Footnote	
(a)	(b)	(c)	(d)	
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line
sample entries:				
I	100	C, F	1	
I	190	C, F		
I	360	ALL	2	
I	ALL	F	3	
II	2010	B	4	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Ameritech			AMTR
	1. Illinois Bell	- Illinois	LBIL
	2. Indiana Bell	- Indiana	NBIN
	3. Michigan Bell	- Michigan	MBMI
	4. Ohio Bell	- Ohio	OBOH
	5. Wisconsin Bell	- Wisconsin	WTWI
Bell Atlantic			BATR
	1. Chesapeake and Potomac		CPTC
		- Dist. of Columbia	CDDC
		- Maryland	CMMD
		- Virginia	CVVA
		- West Virginia	CWWV
	2. Diamond State Telephone	- Delaware	DSDE
	3. Bell of Pennsylvania	- Pennsylvania	PAPA
	4. New Jersey Bell	- New Jersey	NJNJ
Bell South			BSTR
	1. Southern Bell		SBTC
		- Florida	SBFL
		- Georgia	SBGA
		- North Carolina	SBNC
		- South Carolina	SBSC
	2. South Central Bell		SCTC
		- Alabamá	SCAL
		- Kentucky	SCKY
		- Louisiana	SCLA
		- Mississippi	SCMS
		- Tennessee	SCTN
NYNEX			NXTR
	1. New England Telephone		NETC
		- Maine	NEME
		- Massachusetts	NEMA
		- New Hampshire	NENH
		- Rhode Island	NERI
		- Vermont	NEVT
	2. New York Telephone	- New York	NYNY
Pacific Telesis			PTTR
	1. Pacific Bell	- California	PTCA
	2. Nevada Bell	- Nevada	PTNV
Southwestern Bell Telephone Company			SWTR
		- Arkansas	SWAR
		- Kansas	SWKS
		- Missouri	SWMO
		- Oklahoma	SWOK
		- Texas	SWTX

Holding Company	Operating Company	Study Area	Study Area Code
U.S. West			USTR
	1. Mountain Bell		MSTC
		- Arizona	MSAZ
		- Colorado	MSCO
		- Idaho	MSID
		- Montana	MSMT
		- New Mexico	MSNM
		- Utah	MSUT
		- Wyoming	MSWY
	2. Northwestern Bell		NWTC
		- Iowa	NWIA
		- Minnesota	NWMN
		- Nebraska	NWNE
		- North Dakota	NWND
		- South Dakota	NWSD
	3. Pacific Northwest Bell		PNTC
		- Idaho	PNID
		- Oregon	PNOR
		- Washington	PNWA
Total Divested Bell Operating Companies			TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Operating Company	Study Area	Study Area Code
Alascom, Inc.		- Alaska	AKAK
Central Telephone Company			CETC
	1. of Florida	- Florida	CEFL
	2. of Nevada	- Nevada	CENV
Cincinnati Bell Telephone	- Ohio & Kentucky		CBTC
Continental Telephone Company			COTC
	1. Contel of California	- California	COCA
	2. Contel of Missouri	- Missouri	COMO
	3. Contel of New York	- New York	CONY
	4. Contel of Texas	- Texas	COTX
	5. Contel of Virginia	- Virginia	COVA
GTE Telephone Operating Companies			GTTC
	1. General Telephone Company of California	- California	GTCA
	2. General Telephone Company of Florida	- Florida	GTFL
	3. General Telephone Company of the Northwest, Inc.		GTNW
		- Idaho & Montana	GTNA
		- Idaho	GTID
		- Montana	GTMT
		- OR, WA & Wstn CA	GTNB
		- Oregon	GTOR
		- Washington	GTWA
		- CA - West Coast	GNCA
	4. General Telephone Company of the South		GTSO
		- Alabama	GTAL
		- Georgia	GTGA
		- Kentucky	GTKY
		- North Carolina	GTNC
		- South Carolina	GTSC
		- Tennessee	GTTN
		- Virginia	GTVA
		- West Virginia	GTWV

Holding Company	Operating Company	Study Area	Study Area Code
	5. General Telephone Company of the Southwest		GTSW
		- Arkansas	GTAR
		- New Mexico	GTNM
		- Oklahoma	GTOK
		- Texas	GTTX
	6. GTE of the North, Inc.		GTMW
		- Illinois	GTIL
		- Indiana	GTIN
		- Iowa	GTIA
		- Michigan	GTMI
		- Minnesota	GTMN
		- Missouri	GTMO
		- Nebraska (also serving Kansas)	GTNE
		- Ohio	GTOH
		- Pennsylvania	GTPA
		- Wisconsin	GTWI
	7. Hawaiian Telephone Company	- Hawaii	GTHI
Lincoln Telephone Company		- Nebraska	LTNE
Puerto Rico Telephone Company		- Puerto Rico	PRPR
Rochester Telephone Corporation		- New York	RYNY
Southern New England Telephone		- Connecticut	SNCT
United Telephone System			UTTC
	1. United Tel. Co. of Florida	- Florida	UTFL
	2. United Tel. Co. of Indiana	- Indiana	UTIN
	3. Carolina Tel. and Tel. Co.	- North Carolina	UTNC
	4. United Tel. Co. of Ohio	- Ohio	UTOH
	5. United Tel. Co. of Penn.	- Pennsylvania	UTPA
	6. United Inter-Mountain Tel. Co.	- Tennessee	UTIM
		- Virginia	UTTN
			UTVA
Total Independent Companies			TICO
Total Industry			TOTL

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